

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.
Tony Parker on 06/05/2018

IN THE CHANCERY COURT
FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, PART III

ABU-ALI ABDUR'RAHMAN, et al.,)
)
 Plaintiffs,)
)
vs.) CASE NO.
) 18-183-III
TONY PARKER, et al.,)
)
 Defendants.)

)

DEPOSITION OF:

TONY PARKER

Taken on behalf of the Plaintiffs

June 5, 2018

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1	I N D E X			Page/Line	
2					
3	THE WITNESS: TONY PARKER				
4	EXAMINATION BY MS. HENRY			8	4
5					
6	INDEX OF EXHIBITS				
7	Exhibits	Description		Page/Line	
8	Exhibit A	Notice of Deposition		11	18
9	Exhibit B	Memorandum and Order		12	6
10		Denying Motion for			
11		Protective Order Seeking			
12		to Quash Parker and Mays			
13		Depositions But Issuing			
14		Limitations on Time and			
15		Scope of Depositions;			
16		and Additional Orders on			
17		Deadlines on Expert			
18		Disclosures and			
19		Defendants' Summary			
20		Judgment Filing			
21	Exhibit C	Plaintiffs' Notice of		13	7
22		Depositions			
23	Exhibit D	Amended Complaint for		18	10
24		Declaratory Judgment			
25	Exhibit E	April 3, 2018 Letter		46	16
	Exhibit F	Tennessee Code Annotated		47	17
		10-7-503			
	Exhibit G	May 4, 2018 Letter		49	4
	Exhibit H	Defendants' Answer to		52	18
		Amended Complaint			
	Exhibit I	Plaintiffs' First		59	6
		Request for Production			
		of Documents			

1	Exhibit	J	Defendants' Response to	61	1
2			Plaintiffs' Request for		
			Production of Documents		
3	Exhibit	K	Order	116	15
4	Exhibit	L	Motion to Set Execution	130	21
5			Dates		
6	Exhibit	M	October 18, 2017 E-mail	134	15
			Chain		
7	Exhibit	N	Photographs (three)	135	20
8	Exhibit	O	Order Granting in Part	140	19
9			and Denying in Part		
10			Plaintiffs' Motion to		
			Compel		
11	Exhibit	P	September 7, 2017 E-mail	142	5
12	Exhibit	Q	Defendants Parker and	143	2
13			Mays Answer to		
14			Interrogatory 1 and		
15			Supplemental Response to		
			Request for Production		
			of Documents Pursuant to		
			the Court's Order Dated		
			May 7, 2018		
16	Exhibit	R	September 7, 2017 E-mail	173	8
17			Chain		
18	Exhibit	S	Agreement Between	181	19
19			Riverbend Maximum		
20			Security Institution		
			Tennessee Department of		
			Corrections		
21	Exhibit	T	"Lethal Injection	185	8
22			Stalled:		
23			Non-accessibility of		
			Pentobarbital Affects		
			Execution in Tennessee"		
			Article		
24	Exhibit	U	Department of Correction	190	8
25			PowerPoint and Discovery		
			Documents		

1	Exhibit V	April 2, 2018 Letter	251	7
2		with Attachments		
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
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1 The deposition of TONY PARKER was
2 taken by counsel for the Plaintiffs, on
3 June 5, 2018, commencing at 9:30 a.m., in The
4 Federal Public Defenders Office, 810
5 Broadway, Suite 200, Nashville, Tennessee,
6 for all purposes under the Tennessee Rules of
7 Civil Procedure.

8 The formalities as to notice,
9 caption, certificate, et cetera, are not
10 waived. All objections, except as to the
11 form of the questions, are reserved to the
12 hearing.

13 It is agreed that Carissa L.
14 Boone, being a Notary Public and Court
15 Reporter, may swear the witness, and that the
16 reading and signing of the completed
17 deposition by the witness are not waived.

18
19
20 * * *

1 TONY PARKER,
2 having been first duly sworn, was examined
3 and testified as follows:

4 EXAMINATION

5 BY MS. HENRY:

6 Q. Good morning, Commissioner Parker.
7 We'll start by asking you to state your name
8 and position on the record, please?

9 A. Tony Parker, Commissioner of the
10 Tennessee Department of Corrections.

11 Q. Thank you, Commissioner Parker. My
12 name is Kelley Henry, and I am lead counsel
13 on behalf of the Plaintiffs in the case of
14 Abu-Ali Abdur'Rahman versus Parker.

15 I'm the Supervisor of the Capital
16 Habeas Unit for the Federal Public Defenders
17 Office, and we're in my conference room at
18 810 Broadway this morning; is that correct?

19 A. That's correct.

20 Q. And we have not met before this
21 morning; is that correct?

22 A. That's correct.

23 Q. Have you had your deposition taken
24 before?

25 A. I have.

1 Q. All right. I'm just going to go over,
2 then, briefly, some of the ground rules for
3 depositions and also talk about what the
4 ground rules are specifically for today.

5 Is that all right?

6 A. Sure.

7 Q. Before I do that, I'd like to go ahead
8 and introduce you to everyone here. But
9 before I do that, I should note that we
10 started at 9:30 on the dot as agreed with
11 your counsel.

12 But seated next to me is
13 Stephen Kissinger, and he's lead counsel for
14 the East Tennessee Plaintiff and he's with
15 the Federal Defenders Office in Knoxville.
16 Next to him is Bradley Maclean, who is
17 counsel for Abu-Ali Abdur'Rahman, and he's in
18 private practice.

19 Over here we have Katherine Dix who is
20 an Assistant Federal Defender in my office
21 and is assisting me; Jerome Del Pino,
22 Assistant Federal Defender, who is also
23 assisting me from my office. Next to Jerome
24 is Richard Tennent, another Assistant Federal
25 Defender from my office. Next to him is

1 Amy Harwell, another Assistant Federal
2 Defender from my office.

3 A. Okay.

4 Q. And they're all on my team.

5 And Kathleen Morris is counsel for
6 Leroy Hall, and she's in private practice,
7 pro bono. Mr. Maclean and Ms. Morris are pro
8 bono lawyers.

9 Then we have Robert Mitchell with the
10 Attorney General's Office. He's on your
11 team.

12 A. Uh-huh.

13 Q. And we have Charlotte Davis and
14 Scott Sutherland also with the AG's office.

15 Seated right behind me are three
16 interns who are volunteering with us for the
17 Summer. We have Rachel Ann Stephens,
18 Erin Drake and Tenia Miles, all right?

19 A. Okay.

20 Q. It's possible that during the course
21 of this deposition, my boss might check in on
22 me to make sure I'm not embarrassing the
23 family, as they say.

24 A. Uh-huh.

25 Q. His name is Henry Martin.

1 A. Okay.

2 Q. Other than that, I don't expect any
3 other guests today, all right?

4 A. Okay.

5 Q. The Court has ordered that we have six
6 hours today, which is maybe why I'm speaking
7 a little quickly, and also because this is
8 just preliminary stuff. But the six hours
9 does not include breaks nor does it include
10 lunch. I have my timer going and the court
11 reporter's also keeping a record as well, all
12 right?

13 A. All right.

14 Q. So, Mr. Parker, I'm going to start
15 this morning by showing you a document.

16 MS. HENRY: I'm going to ask the
17 court reporter to make this Exhibit A.

18 (Exhibit A was marked.)

19 BY MS. HENRY:

20 Q. Have you seen this document before?

21 A. Yes.

22 Q. All right. And do you recognize this
23 document as a Notice of Deposition?

24 A. Yes.

25 Q. And are you here today pursuant to

1 that Notice of Deposition?

2 A. I am.

3 Q. All right. The next thing I'd like
4 to show you, Mr. Parker, I'll have the court
5 reporter mark as Deposition Exhibit B.

6 (Exhibit B was marked.)

7 BY MS. HENRY:

8 Q. And I'll represent to you, Mr. Parker,
9 that Deposition Exhibit B is the Court's
10 order on a Motion to Compel your testimony
11 that sets forth the parameters of the
12 deposition.

13 Have you seen that document before?

14 A. I have.

15 Q. All right. And when did you see it?

16 A. Over the last couple of weeks.

17 Q. All right.

18 A. During different times.

19 Q. All right. So are you familiar with
20 the contents of the document?

21 A. Yes.

22 Q. All right. We'll be following the
23 parameters set forth by the Court in that
24 order, which is Deposition Exhibit B. If
25 during the course of the deposition, your

1 counsel has some objections, the Court has
2 actually been kind enough to provide us with
3 specific guidance on how to handle them. And
4 that was in a subsequent order, which I'm
5 going to have the court reporter mark as
6 Deposition Exhibit C.

7 (Exhibit C was marked.)

8 BY MS. HENRY:

9 Q. And basically what that order says --
10 and you can keep it in front of you, sir, if
11 you need to refer to it -- is that during the
12 course of the deposition, from time to time
13 your lawyer might have some objections to
14 questions I asked because I didn't ask them
15 correctly or he doesn't like them or he
16 doesn't like the way they sound. And he'll
17 make those objections, but you'll be allowed
18 to go ahead and answer the question. He's
19 just preserving the record.

20 If he instructs you not to answer a
21 question, because he believes it's in
22 violation of the Court's order, which is our
23 Deposition Exhibit B, then we'll ask those
24 questions to be certified. And you are not
25 to answer those questions.

1 Is that clear?

2 A. That's clear.

3 Q. All right. That just keeps everybody

4 rolling, so we know sometimes Mr. Sutherland

5 might object. He'll say "Relevance, hearsay.

6 Asked and answered," and that sort of thing.

7 And you can go ahead and answer the question

8 without me having to repeat it and without

9 him having to reobject. It just moves things

10 along a little quicker, okay?

11 A. Okay.

12 Q. Mr. Parker, let me ask you this

13 morning, have you taken any medications that

14 impact your ability to remember or answer

15 questions clearly or hear questions?

16 A. No, I have not.

17 Q. Are you clearheaded and able to

18 understand the questions I'm asking you so

19 far this morning?

20 A. Yes.

21 Q. During the course of the deposition,

22 there will be no trick questions. I'm not

23 that clever. If I ask a question poorly,

24 it's because it's poorly worded, and I will

25 not be offended if you tell me it's poorly

1 worded, okay?

2 A. Okay.

3 Q. I'm not trying to confuse you, and I

4 don't want you to be confused, all right?

5 A. Okay.

6 Q. What I want you to do is answer the

7 question as, you know, fully as you need to.

8 If it's a "yes" or "no," but you need to

9 explain, I want you to explain, okay?

10 A. Absolutely.

11 Q. We want to understand your position

12 and all the knowledge that you have, okay?

13 A. Okay.

14 Q. And do you understand that the parties

15 will be relying on the truthfulness and

16 completeness of your answers to prepare this

17 case for court?

18 A. I do.

19 Q. And you understand that myself and my

20 fellow lawyers are representing men who are

21 under a sentence of death, correct?

22 A. That's correct.

23 Q. And so this is pretty important?

24 A. Absolutely.

25 Q. And so what we want to do today is

1 just get your honest answers. And if you say
2 "uh-huh" "or huh-uh," I'm probably going to
3 correct you. Not because I'm treating you
4 like my 19-year-old son, but because I need
5 to make sure the record reflects exactly what
6 your answers are, okay?

7 A. Okay.

8 Q. So I'm -- I promise you I'm not trying
9 to be rude or embarrass you.

10 A. That's fine.

11 Q. During the day, what my plan is, is to
12 go for about an hour-and-15, hour-and-a-half,
13 just whenever there's a natural break this
14 morning. Then we'll also break, you know, at
15 noon, 12:15, 12:30, natural breaking time for
16 an hour lunch. We'll come back, have a short
17 afternoon break, and we will complete within
18 that six-hour time frame, okay?

19 A. Okay.

20 Q. Do you have any plans today that are
21 going to interfere with that?

22 A. No.

23 Q. All right. Also, Commissioner Parker,
24 should an emergency arise -- I know that
25 you're an important man and there might be

1 something that happens -- we have arranged
2 for you to have a private conference room on
3 our first floor, that has a landline and
4 privacy, okay?

5 A. Okay. Let's hope that don't [sic]
6 happen.

7 Q. I hope it doesn't happen, either. But
8 we wanted to make sure and have those
9 contingencies taken care of.

10 A. Absolutely.

11 Q. All right?

12 A. Thank you.

13 Q. There's water and there are some
14 snacks and there's coffee available. If --

15 A. Thank you.

16 Q. -- your blood sugar gets low, you
17 know, please tell us. I don't control all
18 the breaks. If you need to take a break, you
19 just tell me and we'll do it, all right?

20 A. Absolutely.

21 Q. And if you need to take a smoke break,
22 you can do that too, but you got to go --

23 A. Yeah.

24 Q. -- you know, several blocks away. So
25 anyway, all right, we'll get started.

1 Do you have any questions of me before
2 we get started?

3 A. I don't have any questions. No, thank
4 you.

5 Q. The next document I want to show you
6 is kind of big.

7 MS. HENRY: And I'll ask the court
8 reporter to mark that as Deposition
9 Exhibit D.

10 (Exhibit D was marked.)

11 THE WITNESS: Thank you.

12 BY MS. HENRY:

13 Q. Sure.

14 Do you recognize that document, sir?

15 A. I do.

16 Q. And what is that?

17 A. That's the Complaint that was filed
18 and our -- I'm assuming our responses to --

19 Q. This -- I'll tell you --

20 A. -- the action.

21 Q. -- yeah, this is just the Complaint.

22 A. Okay.

23 Q. Do you recognize that?

24 A. Yes.

25 Q. So it contains 90 pages, and it has an

1 exhibit which is Exhibit A, the January 8th,
2 2018 Lethal Injection Execution Manual,
3 Execution Procedures for Lethal Injection,
4 and Exhibit B, which is an e-mail dated
5 September 7th, 2017.

6 You just look through there and see if
7 that seems to be accurate.

8 A. (Witness reviews document.)

9 Seems to be. I'm not -- I don't see
10 the e-mail, but that's okay. I'm sure it's
11 here.

12 Q. If you flip over to the last page, the
13 very last page --

14 A. Oh, I see.

15 Q. It's double-sided.

16 A. It's on the back side.

17 Q. Yes, sir.

18 A. Okay. All right.

19 Q. And so you've seen that document
20 before?

21 A. Yes.

22 Q. When did you first see that document?

23 A. The -- which document are you talking
24 about?

25 Q. I'm sorry, the Complaint.

1 A. Oh, weeks ago. I -- I don't remember
2 the exact date, but I've seen it in the past.
3 Q. All right.
4 A. Yeah.
5 Q. And you know what? I skipped a whole
6 section. I got excited about the Complaint,
7 and I forgot to ask you about your
8 background. Can you tell us -- you told us
9 you're the Commissioner of the Department of
10 Correction. How long have you held that
11 position?
12 A. Approximately two years.
13 Q. All right. Before that, how were you
14 employed?
15 A. I was the Assistant Commissioner of
16 Prisons for the Department of Correction.
17 Q. And as the Assistant Commissioner of
18 Prisons, what was your duty?
19 A. To oversee and supervise the Prison
20 Operations division for the Department of
21 Corrections.
22 Q. And when you were the Assistant
23 Commissioner of Prisons, did you have any
24 responsibilities with respect to lethal
25 injection and executions?

1 A. I was -- I directly supervised the
2 wardens of the facilities who -- and that
3 includes the one at Riverbend, so, yes, I
4 did.

5 Q. As the direct supervisor of the Warden
6 at Riverbend, what was your specific role
7 with respect to the Warden, regarding
8 executions?

9 A. I -- kind of a -- I guess a dual role
10 with the Commissioner over the Department who
11 oversees the protocols and the administration
12 of the lethal injection or executions in
13 Tennessee. As me being the direct supervisor
14 of the Warden, basically monitoring the
15 execution trainings and things like that.

16 And from time to time, reviewing the
17 protocols and the procedures for the
18 executions in Tennessee.

19 Q. How long did you hold that position?

20 A. Approximately four years. I -- don't
21 hold me to that, but that's an approximate
22 number. I lose track of time as I get older
23 every year.

24 Q. I hear that.

25 So during the time that you were the

1 Assistant Commissioner of Prisons, was that
2 the time period when Tennessee changed their
3 protocol from the three-drug protocol to a
4 single-drug protocol involving the use of
5 pentobarbital?

6 A. I'm not sure. I -- it could have
7 been, but my -- I don't remember the exact
8 dates, so could have been.

9 Q. So if I represent to you that it
10 occurred in 2013, would that be the -- during
11 the time frame that you were the Assistant
12 Commissioner?

13 A. I was the Assistant Commissioner in
14 2013, yes.

15 Q. Okay. I'm going to get back to your
16 role as the Assistant Commissioner in just a
17 minute. But prior to that position, how were
18 you employed?

19 A. I was the Correctional Administrator
20 for the West Region in the state.

21 Q. And what did you do as a Correctional
22 Administrator for the West Region?

23 A. Again, I supervised Prison Operations
24 for the facilities in the West Region,
25 primarily Northwest Correctional Complex,

1 West Tennessee State Penitentiary, Mark
2 Luttrell, Hardeman and Whiteville.
3 Q. How long did you have that position?
4 A. Approximately two years, I believe.
5 Q. Did that position cause you to have
6 any role with lethal injection executions?
7 A. No.
8 Q. And prior to that position, how were
9 you employed?
10 A. I was the Warden at two facilities in
11 the West Region: Northwest Correctional
12 Complex and West Tennessee State
13 Penitentiary.
14 Q. And how long did you hold those
15 positions?
16 A. Approximately eight years.
17 Q. Prior to that, were you still with
18 TDOC?
19 A. I was.
20 Q. And in what role?
21 A. I was the Associate Warden of
22 Operations at Northwest Correctional Complex
23 -- I'm sorry. I was the Deputy Warden at
24 Northwest Correctional Complex.
25 Q. And I assume as Deputy Warden of

1 Northwest Correctional Complex, you didn't
2 have anything to do with executions?
3 A. No.
4 Q. Did you have anything to do with
5 executions in the state of Tennessee prior to
6 assuming your role as the Associate
7 Commissioner of Prisons [sic]?
8 A. Assistant, no.
9 Q. Assistant.
10 A. I did not.
11 Q. Okay. All right. So then we won't go
12 through all of that. I'm going to ask you
13 this sort of general question: Has your
14 entire career been in correction?
15 A. It has.
16 Q. Has it always been with the Tennessee
17 Department of Correction, or were you at
18 another facility?
19 A. It's always been with the Tennessee
20 Department of Corrections.
21 Q. And for how long?
22 A. Approximately 35 years.
23 Q. And what is your educational
24 background, sir?
25 A. I have a Master's degree in Security

1 Studies from the Naval Postgraduate School.
2 I have a Bachelor of Science in Criminal
3 Justice from the University of Tennessee at
4 Martin. And an Associate of Criminal Justice
5 degree from Dyersburg State Community
6 College.

7 Q. Did you have to write a thesis for
8 your master's degree?

9 A. I did.

10 Q. What was the topic?

11 A. Prison radicalization in U.S. prisons.

12 Q. Prison radicalization in U.S. prisons.

13 A. Yes, basically establishing a
14 deradicalization program for U.S. prisons.

15 Q. And was it based on a model of another
16 country?

17 A. I studied two different countries
18 really. Singapore and Saudi Arabia.

19 Q. And do you endorse the Saudi Arabia
20 model?

21 A. I somewhat did. I think there's
22 elements in -- in the Saudi model that we
23 could use in Tennessee that would help us as
24 far as trying to counter radicalization in
25 our prisons.

1 Q. And you did that as part of the Navy,
2 sir?

3 A. It was at the Naval Postgraduate
4 School in Monterey, California.

5 Q. So were you in the Navy?

6 A. I was not in the Navy.

7 Q. I want to get back, if I might,
8 Commissioner, to your role as the Assistant
9 Commissioner of Prisons. Am I saying that
10 right?

11 A. Yes.

12 Q. And you said during -- when you served
13 in that role, part of your duties was to
14 monitor execution training. "Monitor" could
15 mean a lot of things. Can you tell me what
16 "monitor" means to you?

17 A. As the -- again, basically as the
18 Assistant Commissioner of Prisons, I would
19 attend and observe the execution trainings at
20 Riverbend and basically supervise the Warden
21 in his daily activities at the facility.

22 Q. And so when you say "supervise the
23 Warden," what does that mean in the context
24 of an execution rehearsal? Would you tell
25 him what to do? Did you provide him

1 training? Or did you just watch him do it?

2 A. I would say basically monitored the
3 activity.

4 Q. Uh-huh.

5 A. If he had questions, of course I would
6 have to answer questions. And that's
7 basically it.

8 Q. Okay. And how did you prepare to
9 carry out that role?

10 A. My preparation was really, I guess, to
11 review the protocol, to keep the Commissioner
12 informed of -- of activities, things like
13 that.

14 Q. And so when you say "review the
15 protocol," does that mean you read the
16 protocol?

17 A. Yes.

18 Q. If you had questions about what the
19 protocol meant, was there somebody you could
20 ask?

21 A. There was.

22 Q. Okay. And who was that?

23 A. People on staff in the Department,
24 different individuals, Commissioner.

25 Q. Uh-huh.

1 A. Legal staff, different individuals in
2 the Department.

3 Q. Did you find that there was anyone in
4 the Department who was particularly
5 knowledgeable with any questions that you
6 might have?

7 A. Well, I felt like the Legal team in
8 the Department was very knowledgeable. The
9 Commissioner was knowledgeable.

10 Q. Okay.

11 A. That's primarily it.

12 Q. During the time that you spent as the
13 Assistant Commissioner of Prisons, did you
14 have a role in obtaining lethal injection
15 drugs for executions?

16 A. No. Not that I remember a particular
17 role, no.

18 Q. Okay. Did you obtain knowledge about
19 the Department's attempts to obtain execution
20 drugs?

21 A. As Assistant Commissioner?

22 Q. Yes.

23 A. I would say that -- again, it's been a
24 while. I'm trying to recall.

25 I -- I would say that I was

1 knowledgeable of the fact that it had become
2 a challenge to obtain lethal injection
3 chemicals across -- not only in Tennessee,
4 but in other states also.

5 Q. Were you aware of the efforts that the
6 Department engaged in, in terms of obtaining
7 an individual who was willing to compound
8 pentobarbital?

9 A. Not specifically at the time I was
10 Assistant Commissioner.

11 Q. Okay.

12 A. Those would have probably been
13 conversations that -- at the Department level
14 that I would probably not have been directly
15 involved in at that time.

16 Q. Those are -- that's information you've
17 learned subsequent to your role as
18 Commissioner?

19 A. Yes. It's -- it's information that,
20 as my role as Commissioner would require me
21 to be -- I guess ask more direct questions
22 regarding the availability and the -- the
23 search and the attempts to find lethal
24 injection chemicals.

25 Q. I'm going to ask you some questions

1 about your monitoring of the lethal injection
2 rehearsals during the time that you were
3 Assistant Commissioner of Warden [sic]. But
4 I want to preface those questions with the
5 following provision: If I ask a question
6 that seems to require you to name individuals
7 who participated in those rehearsals, I'm not
8 asking for that information. And we do not
9 want you to provide that; is that okay?

10 A. Well, that's okay.

11 Q. Okay. So as an individual who was
12 charged with supervising and monitoring those
13 practice sessions, did you supervise and
14 monitor the person who served the role of
15 executioner as they would push the chemicals
16 into the line?

17 A. Let me -- let me clarify one thing.

18 Q. Sure.

19 A. My role as Assistant Commissioner, I
20 just want to make sure you understand, was --
21 I did not have a direct responsibility to
22 monitor every rehearsal that took place --

23 Q. Okay.

24 A. -- as part of that process that they
25 do monthly. I -- I was not there at every

1 single rehearsal. In regards to my direct
2 supervision of the individual who is the
3 Executioner who pushes the drug, I'm aware of
4 that procedure, I'm aware of the individual
5 who does that and the process, but as far as
6 directly supervising that individual, no, I'm
7 not.

8 Q. Okay.

9 A. Although, as the Commissioner, I am
10 responsible for the overall management and
11 the carrying out of legal executions in
12 Tennessee.

13 Q. Sure. As you -- well, how many
14 rehearsal sessions would you say you
15 attended? Can you estimate?

16 A. Attended as Assistant Commissioner --

17 Q. Yes, sir.

18 A. -- or in total?

19 Q. As Assistant Commissioner.

20 A. I would -- several. I don't know the
21 exact number.

22 Q. More than a dozen?

23 A. Oh, I'm sure more than a dozen, yes.

24 Q. During those rehearsal sessions that
25 you attended as Assistant Commissioner, were

1 you ever in a position to be in the same room
2 with the individual who serves the role as
3 executioner while he or she was pushing the
4 chemicals?

5 A. Not that I recall.

6 Q. And I should clarify. When I say
7 "chemicals," during the rehearsal sessions,
8 you-all use saline; is that correct?

9 A. That's correct.

10 Q. And is it your understanding that
11 basically saline is an adequate substitute
12 for what it would be like in an actual
13 execution?

14 A. Yes.

15 Q. There's not really any substantive
16 difference in terms of the speed in which you
17 deliver the chemicals, whether it's saline or
18 pentaobarbital or midazolam; is that your --

19 A. Not that I'm aware of.

20 Q. Okay. What sorts of questions would
21 be brought to you when you were Assistant
22 Commissioner of Prisons?

23 A. From who?

24 Q. During an execution rehearsal. What
25 sorts of questions would you be asked?

1 A. You know, very seldom was I asked
2 questions.

3 Q. Uh-huh.

4 A. So, you know, just right now, I can't
5 remember the exact questions that I would
6 have been asked. It would have been general
7 questions, I'm assuming, regarding protocol
8 or simple questions regarding notification.
9 But not anything specific that I can recall
10 right now.

11 Q. All right. I want to talk with you
12 now about your role as Commissioner of
13 Correction if I might. Can you tell me, as
14 Commissioner of Correction, what are your
15 overall responsibilities?

16 A. My overall responsibility is to
17 basically oversee the operations of the
18 Tennessee Department of Corrections, all
19 divisions, ensure that -- with the assistance
20 of my staff, that we operate facilities
21 according to law and by policy and procedure
22 and that -- among many other things, but
23 that's generally my responsibility.

24 Q. How many employees do you supervise --
25 or are you responsible for, I should say?

1 A. The Department has 6,400-plus
2 employees.

3 Q. And how many inmates are you charged
4 with the safety and security of?

5 A. We have approximately 22,000, 22- to
6 23,000 offenders incarcerated. That doesn't
7 include the number of offenders that are in
8 local jails, plus about 78,000 offenders,
9 give or take a few, in the community under
10 Probation and Parole.

11 Q. And Probation and Parole also is under
12 your umbrella; is that correct?

13 A. The supervision of Probation and
14 Parole, yes. Well, I do not supervise the
15 Board of Probation and Parole, but I -- the
16 officers of -- Probation and Parole officers
17 for the State of Tennessee and the Community
18 Supervision section is under the Department's
19 responsibility.

20 Q. How many facilities are you
21 responsible for the orderly running of?

22 A. We have 14 facilities in the state.

23 Q. All right.

24 A. Ten are operated by the State of
25 Tennessee. One is contracted directly with a

1 private entity, CoreCivic. And we have three
2 contracted through the County that CoreCivic
3 operates through the County.

4 Q. What is your role in government? Are
5 you part of the executive branch?

6 A. I am.

7 Q. Do you have a cabinet-level position?

8 A. I do.

9 Q. So do you report directly to the
10 Governor?

11 A. I report directly to the Governor and
12 the Chief Operations Officer for the State,
13 Mr. Greg Adams.

14 Q. Greg Adams?

15 A. (Witness moves head up and down.)

16 Q. I'm sorry. Is that a "yes"?

17 A. Yes.

18 Q. Okay. And I would expect as a member
19 of the cabinet and somebody who's in charge
20 of all of these thousands of employees and
21 tens of thousands of inmates, that you find a
22 need to delegate quite a bit of your
23 responsibilities; is that fair to say?

24 A. There -- yes, that's fair.

25 Q. And when -- who in the Department --

1 let me strike that question.

2 Is there anyone in the Department who
3 serves a role that assists you with
4 implementing executions?

5 A. Well, of course the Warden of the
6 facility and other staff in the Central
7 Office. You know, executive staff within the
8 Department.

9 Q. And is there, for example, an
10 Assistant Commissioner of Prisons right now?

11 A. There is.

12 Q. And who is that?

13 A. His name is David Sexton. /

14 Q. Does Mr. Sexton serve the same role
15 that you did when you were the Assistant
16 Commissioner of Correction?

17 A. His responsibilities are pretty much
18 the same.

19 Q. So does he attend -- periodically
20 attend the monthly rehearsal sessions?

21 A. To my knowledge, yes, he does.

22 Q. Has he received training on the
23 implementation of lethal injection protocols?

24 A. He has. Yes, he has.

25 Q. And where did he receive that

1 training?

2 A. I'm not sure. He's reviewed the --
3 when I said training, let me -- let me make
4 sure I clarify that.

5 Q. Sure.

6 A. He has been involved in the protocol
7 review process. As far as any specific
8 training regarding the delivery of lethal
9 injection drugs, I'm not aware of any
10 specific training regarding that element.

11 Q. Well, thank you for that
12 clarification.

13 Can you tell me what the protocol
14 review process is?

15 A. The protocol review process?

16 Q. Yes.

17 A. It's what we do annually. The
18 protocols are reviewed annually. And the
19 Warden assembles the team there at the
20 facility, too, and they review the protocols
21 from time to time.

22 Q. Is there a written report when they
23 review the protocol?

24 A. I'm not sure.

25 Q. Once the protocol is reviewed, are you

1 verbally given a report on the results of the
2 protocol review?

3 A. As Commissioner?

4 Q. Yes.

5 A. Not always.

6 Q. What is the -- when there's a review,
7 what are they looking at?

8 A. Well there's-- so there's -- there
9 would be two, right? I mean, so if you have
10 your annual -- or you review the protocol --
11 and there's a team that's -- that does that
12 in conjunction with the Warden and the
13 Department staff that reviews the protocol.

14 But as far as when you prepare for an
15 execution, time leading up to executions, the
16 Warden also would go over the protocol. And
17 the Execution Team would review that protocol
18 also.

19 Q. Okay. So there's two different review
20 processes. One is just --

21 A. What I would classify as two different
22 reviews, yes.

23 Q. Okay. So there's an annual process
24 that the Warden is engaged in and the Warden
25 picks his team -- don't tell me who they are.

1 But he picks his team; is that correct?

2 A. Well, I think it's the -- the protocol
3 for the Department of Corrections for
4 executions would be reviewed not only at the
5 Warden's level but at the Department's level
6 to see if there's any necessary changes,
7 modifications. That's done. And then, I
8 guess, again, a refresher for the people who
9 are directly involved in the execution
10 process.

11 Q. And what sorts of things would you be
12 looking for to determine whether there needs
13 to be a change in the protocol or a revision?

14 A. At -- at my level?

15 Q. Or at the Warden's review level. When
16 he's conducting those annual reviews, what
17 sorts of things is he concerned --

18 A. Well, again, let me make sure I'm
19 clear.

20 Q. Sure.

21 A. The annual review process and our
22 annual review of these protocols would be
23 more at the executive level to include the
24 Warden.

25 Q. Okay.

1 A. But it would be a review of -- a
2 departmental review to ensure that you were
3 -- the protocol was current with any changes
4 in statute or any changes in the protocol
5 that needed to be made.

6 Q. And what would cause you at the
7 executive level to determine that there's a
8 change in the protocol that needs to be made?

9 A. Either my knowledge or my staff's
10 knowledge of any kind of changes that might
11 be necessary. I mean, it could -- there's
12 different things that could trigger that.
13 Obviously a change in the legislature or a
14 law or many other things.

15 Q. As Commissioner of Correction, do you
16 -- and without telling me who -- but do you
17 consult with other individuals from various
18 states who serve at your level who are also
19 Commissioners of Corrections who are
20 responsible for executions?

21 A. I do.

22 Q. Could they provide you information
23 from their experience that might cause you to
24 need to revise the protocol?

25 A. Well, they could provide me

1 information. And I guess it's possible --
2 Q. Uh-huh.
3 A. -- that could happen.
4 Q. Okay. When these annual reviews
5 occur, do you -- what sorts of materials do
6 you review? Is it just the protocol in the
7 statute, or do you obtain literature or news
8 articles about other executions and factor
9 that into that consideration in your annual
10 review?
11 A. I think we consider all information
12 that's available.
13 Q. And how would the public know what
14 information was available to you?
15 MR. SUTHERLAND: I'm going to
16 object to the form of the question. He's not
17 qualified to answer how the public would....
18 THE WITNESS: I -- I don't really
19 know. I mean, I -- a lot of the information
20 that I would see, have available to me, I'm
21 assuming would be available to the public.
22 So, I mean....
23 BY MS. HENRY:
24 Q. So --
25 A. I don't -- I don't -- just -- I don't

1 do a report that goes out to the public of
2 how the -- how the review process is done or
3 anything like that, that I'm aware of. But
4 if that helps -- if that answers your
5 question.

6 Q. Sure. Were you on the 2007 committee
7 that reviewed the lethal injection protocol,
8 Commissioner Little's committee?

9 A. I was not.

10 Q. And there was a committee report that
11 came out of that; is that correct?

12 A. I believe so.

13 Q. Have you read that?

14 A. I don't remember reading it entirely,
15 no.

16 Q. Would you have access to that as
17 Commissioner of Correction?

18 A. I probably would.

19 Q. And certainly individuals who have
20 worked for you for a number of years would
21 have access to that; is that correct?

22 A. I'm assuming they would.

23 Q. And if I tell you that it's publicly
24 known and, in fact, she's testified to the
25 fact that she served on the committee, that

1 Debra Inglis sat on that committee and is
2 aware of that information, she would be able
3 to make that information available to you; is
4 that correct?

5 A. Yes.

6 Q. And who is Debra Inglis?

7 A. She's the Chief Legal Counsel for the
8 Department and the assistant -- Deputy
9 Commissioner for the --

10 Q. And your counsel has interposed an
11 objection of what the public has a right to
12 know and what the public doesn't. So I want
13 to go into that a little more.

14 MR. SUTHERLAND: Wait a minute.
15 Let me clarify that. I didn't say that they
16 have a right to know. Your question was:
17 How would the public get access? And I'm
18 saying he's --

19 BY MS. HENRY:

20 Q. And I want to get into that, how the
21 public would get access to the --

22 MR. SUTHERLAND: If he knows.

23 BY MS. HENRY:

24 Q. -- Department of Correction records.
25 So let me ask you a couple of background

1 questions, okay?

2 You stated that you hold a position at
3 the executive department level; is that
4 correct?

5 A. That's correct.

6 Q. And you are appointed by the Governor;
7 is that correct?

8 A. That's correct.

9 Q. And that makes you a State employee;
10 is that correct?

11 A. That's correct.

12 Q. And you run a Department of Correction
13 that maintains a number of records, some of
14 which are confidential and some of which are
15 subject to public review; is that correct?

16 A. That's correct.

17 Q. And the Department of Correction gets
18 a number of Tennessee Public Record Act
19 Requests; is that correct?

20 A. That's correct.

21 Q. And the Department gets a number of
22 records requests regarding materials that the
23 Department has reviewed in crafting lethal
24 injection protocols; is that correct?

25 A. I -- if they ask for a Public Records

1 Request I'm assuming so, yes.

2 Q. And if someone asks for a Public
3 Records Request, where does that request go?

4 A. It goes to the Legal division of the
5 Department.

6 Q. And so have you delegated to the Legal
7 division of the Department the duties of the
8 Department in terms of responding to Public
9 Records Requests?

10 A. Yes. They're -- they primarily have
11 the responsibility for that function, yes.

12 Q. Do you review every public records
13 response that goes from the Department?

14 A. No.

15 Q. Have you ever been consulted on
16 whether you -- certain documents should or
17 should not be disclosed in the response to a
18 Public Records Request regarding executions?

19 A. Clarify your question.

20 Q. Has Ms. Inglis, for example, just as
21 an example, come to you and said: "I've
22 gotten this Tennessee Public Records Acts
23 Request asking for these materials about
24 executions in Tennessee. Is this document
25 something I can turn over, or is it

1 confidential? "

2 A. No, Ms. -- the Legal division makes
3 that decision based on law. They -- I don't
4 recall her ever coming to me saying: "We
5 have this Public Records Request. Do you or
6 do you not want me to turn this over?" No.

7 Q. And while we're on the topic of Public
8 Records Request, just so I don't forget, I'm
9 going to show you a couple of documents.

10 MS. HENRY: Are we on E?

11 THE COURT REPORTER: E.

12 BY MS. HENRY:

13 Q. I'm going to show you, Mr. Parker,
14 what I'm going to ask the court reporter to
15 mark as Deposition Exhibit E.

16 (Exhibit E was marked.)

17 MR. SUTHERLAND: Do you have one
18 for me?

19 MS. HENRY: I'm sorry. There you
20 go, Mr. Sutherland (tendering).

21 BY MS. HENRY:

22 Q. I've handed you, Mr. Parker -- or
23 Commissioner Parker, Deposition Exhibit E,
24 which is a letter addressed to you, Mr. Mays
25 and Ms. Inglis, dated April 3rd, 2018. And

1 it is -- does not have my signature, but I'll
2 represent to you the copy that was sent to
3 you did, and my paralegal, Janet Santana.
4 This is a Tennessee Public Records Act
5 Request sent April 3, 2018. Have you ever
6 seen that letter?

7 A. I may have. I don't specifically
8 recall.

9 Q. If I tell you, Commissioner Parker --
10 let me ask you this, Commissioner Parker: Do
11 you know how long the Department has to
12 respond to a Public Records Act Request?

13 A. I do not.

14 Q. I want to show you, sir, what I'm
15 going to ask the court reporter to mark as
16 Deposition Exhibit F.

17 (Exhibit F was marked.)

18 BY MS. HENRY:

19 Q. And, sir, I've provided you with a
20 copy of a statute, which is Tennessee Code
21 Annotated Section 10-7-503, which is the
22 Tennessee Public Records Act and I would
23 direct your attention to Subparagraph
24 Little A, Numeral 2, Large A and Large -- I'm
25 sorry, Large B, where it says: The custodian

1 of public records or the custodian's designee
2 shall promptly make available for inspection
3 any public record not specifically exempt
4 from disclosure. In the event it is not
5 practical for the record to be promptly
6 available for the inspection, the custodian
7 shall, within seven business days -- Sub
8 Little Roman I, make the information
9 available to the responder, Little Roman II,
10 deny the request, et cetera.

11 So would you agree with me, sir, that
12 the statute requires a response of some sort
13 within seven days?

14 A. I would.

15 Q. If I tell you, sir, that the April 3rd
16 Tennessee Public Records Act Request which
17 was sent to you, Mr. Mays and Ms. Inglis has
18 not been responded to, can you explain to me
19 the reason for the delay?

20 A. I cannot.

21 Q. Is the person who could tell me the
22 reason for the delay Ms. Inglis?

23 A. I'm assuming she would probably have a
24 better response than I'm able to give you.

25 Q. Thank you, sir.

1 I'm next going to show you a document
2 I'm going to ask the court reporter to mark
3 as Deposition Exhibit G.

4 (Exhibit G was marked.)

5 BY MS. HENRY:

6 Q. And that, sir, is a letter dated
7 May the 4th of 2018. Again, addressed to
8 you, Mr. Mays and Ms. Inglis, and it is an
9 identical letter which was sent by me and
10 Ms. Santana on May 4th, 2018.

11 Have you seen that letter?

12 A. I don't recall seeing it. I may have.

13 Q. And you would affirm with me, sir,
14 that as we sit here today on June 5, 2018,
15 that's more than seven days since May 4th,
16 2017; is that correct?

17 A. That's correct.

18 Q. And do you have any reason as to why
19 this letter has gone unresponded to?

20 A. I do not.

21 Q. Did you direct Ms. Inglis to withhold
22 responses to our letter?

23 A. I did not.

24 Q. Would Ms. Inglis be in the best
25 position to explain why these letters have

1 gone unanswered?

2 A. She would have a better answer than I
3 would have, probably.

4 Q. Would you object, Mr. Parker, to going
5 back to the Department today and asking
6 Ms. Inglis to please respond to the letters
7 which I've shown you as Exhibits E and G?

8 A. I would certainly be willing to
9 inquire of General Counsel what the issue
10 was, assuming that we haven't responded, to
11 find out why, why we haven't responded.

12 Q. Thank you.

13 And you would agree, sir, that if I
14 tell you I live in Nashville, Tennessee --

15 MR. SUTHERLAND: Objection to the
16 leading.

17 BY MS. HENRY:

18 Q. -- if I live in Nashville, Tennessee,
19 Davidson County, that I'm a citizen of the
20 state of Tennessee?

21 A. I would agree to that, yes.

22 Q. All right. And my clients are
23 citizens of the state of Tennessee, aren't
24 they?

25 A. Yes.

1 Q. And citizens of the state of Tennessee
2 have the right to public records; is that
3 correct?

4 A. That's correct.

5 Q. And the materials considered by the
6 Protocol Review Committee, would those
7 materials be public records?

8 A. Restate the question, I'm sorry.

9 Q. Any materials that you consider in
10 your annual protocol review process, would
11 those materials be subject to a Tennessee
12 Public Records Act Request?

13 A. I'm assuming that parts of it would.

14 Q. And what parts wouldn't be?

15 A. The parts that reveal identity of
16 individuals, the parts regarding the security
17 protocols for the facility and the security
18 operations of the protocol, things like that.

19 Q. And when you say "security," you're
20 talking about, for example, on the evening of
21 the execution, what security procedures are
22 put in place to make sure that everyone
23 involved in the process is safe; is that --

24 A. Yeah, that. And the -- the different
25 security protocols for the inside of the

1 facility as far as access to areas, things
2 like that.
3 Q. All right. So other than those
4 portions of the materials reviewed, which are
5 subject to the Public Records Act exclusion,
6 because they're confidential and the security
7 materials, any other materials considered by
8 you would be subject to a Tennessee Public
9 Records Act Request by a citizen of the state
10 of Tennessee?

11 A. To the best of my knowledge, yes.

12 Q. I will let you go ahead and keep
13 Exhibit D handy, and I'm going to show you
14 now a document that I will ask the court
15 reporter to give the next letter.

16 MS. HENRY: Which I believe is H?

17 THE COURT REPORTER: Correct.

18 (Exhibit H was marked.)

19 BY MS. HENRY:

20 Q. I'll ask you, Mr. Parker, have you
21 seen Deposition Exhibit No. -- Letter H
22 before?

23 A. I have.

24 Q. And when did you see it?

25 A. Several times. Over the last three or

1 four weeks, probably, several times. I don't
2 -- I don't remember specific dates, things
3 like that, but....

4 Q. So this Defendant's Answer to the
5 Complaint, Amended Complaint, will you agree
6 with me that it has paragraph numbers?

7 A. Yes.

8 Q. And next to the paragraph numbers,
9 there are answers that say things like:
10 "Admit" or "Deny;" is that correct?

11 A. Yes.

12 Q. Did you have any input as to whether
13 certain paragraphs should be admitted or
14 denied?

15 A. I did. I -- my discussion with my
16 staff in regards to answering this, the Legal
17 team, so, yes, I did have input.

18 Q. All right. And when you say "the
19 Legal team," are you referring to
20 Mr. Sutherland, Ms. Davis and Mr. Mitchell,
21 or are you referring to Ms. Inglis and the
22 Department of General Counsel?

23 A. I'm referring to the Department's
24 Legal team.

25 Q. Okay. And that's the General

1 Counsel's office?

2 A. Yes.

3 Q. Okay. It's a little confusing because
4 you're represented here by the State Attorney
5 General's Office.

6 A. Uh-huh.

7 Q. So I want to make sure when you say
8 "Legal team" you're referring to Ms. Inglis
9 and Department of General Counsel?

10 A. Yes.

11 Q. All right. So you have specific
12 knowledge to -- as to the materials or the
13 answers provided in Defendant's answer?

14 A. In some -- in some of them, I do. And
15 some of them, I do not.

16 Q. Okay. And can you broadly categorize
17 those answers of which you do have knowledge
18 -- personal knowledge?

19 MR. SUTHERLAND: I'm going to
20 object to the form of the question.

21 I think you'd have to ask him if
22 he knows.

23 THE WITNESS: There -- there are
24 specific questions that would relate to
25 things that I have personal knowledge about

1 in this -- in this document. And then
2 there's some that, just as an example, would
3 require a medical opinion that I would not
4 have. So that's as general as basically I
5 can put it.

6 BY MS. HENRY:

7 Q. Great. Thanks.

8 And that's what I'm trying to get at
9 so that we can maybe -- I'm not going to ask
10 you questions --

11 A. Sure.

12 Q. -- about things that require expert
13 opinions. But I think I'm hearing you say
14 that you do have personal knowledge with
15 respect to basic facts about the execution
16 protocol and allegations regarding the
17 protocol itself?

18 A. Yes.

19 Q. Am I hearing you right?

20 A. Yes.

21 Q. And so you would have been able to
22 provide that information so that it got into
23 this document so that we could understand the
24 Department's position; is that correct?

25 A. Yes.

1 Q. Okay. We'll get back to your answer
2 again. I just kind of wanted to be clear on
3 that.

4 With respect to Deposition Exhibit D,
5 which is the Amended Complaint, there was an
6 original Complaint filed on February 20th of
7 2018. And a hand-delivered copy of that and
8 the summons was delivered to your office.
9 Did you receive that copy on February 20th of
10 2018?

11 A. I may have. I don't specifically
12 remember receiving it.

13 Q. Okay. When did you first become
14 engaged with the facts as they were pled in
15 the Complaint?

16 A. I don't remember a specific date or
17 time and place. As you can imagine, I have a
18 lot of things go on every day.

19 Q. Yes.

20 A. I -- I remember the Complaint. I
21 remember vaguely speaking to the Legal team
22 and giving responses. But I don't -- I
23 couldn't give you a date or time, a specific
24 time.

25 Q. Okay. And is dealing with the

1 substance of the Complaint and how an
2 individual -- or how you were going -- strike
3 that question. It's a bad question.

4 What role has General Counsel's Office
5 played as far as answering the Complaint that
6 was filed?

7 A. I think assisting the Commissioner in
8 the response. In some cases, talking about
9 things that we have done in regards to the
10 execution process, steps that had been taken
11 sometimes to discuss with me things --

12 MR. SUTHERLAND: Let me stop you
13 there. We're getting -- you're getting to
14 attorney/client.

15 MS. HENRY: I'm trying to figure
16 out what is and what isn't attorney/client.
17 That's the reason for asking the question.

18 BY MS. HENRY:

19 Q. I really don't want to get into
20 attorney/client. I'm trying -- as the Court
21 has ruled, Commissioner, there are some
22 things that are attorney/client that the
23 General Counsel does and there are some
24 things that aren't. So I am just sort of
25 asking you to give me a broad brush and not

1 the specifics. And then we'll figure out
2 whether we can delve further, okay?
3 Does that make sense?
4 A. Not really.
5 Q. Does that address your concern?
6 A. So --
7 Q. I appreciate that answer.
8 A. So here -- again, assisting the
9 Commissioner with my review of the Complaint
10 and my answers, in some cases helping me
11 remember, because my memory is terrible. I
12 have a terrible memory sometimes. And I --
13 helping me remember things that --
14 conversations or information to do the best
15 job I can at answering the Complaint.
16 Q. All right.
17 A. I hope that helps.
18 Q. It does. Thank you.
19 And because this is a timed
20 deposition, I'm going to move on. And if I
21 have time, I might move back --
22 A. Okay.
23 Q. -- to this, okay?
24 I want to move on to some
25 interrogatories because that's going to get

1 us to the -- the protocol itself. I'm going
2 to show you, Commissioner Parker, a document
3 that I would ask to be marked as Exhibit I.
4 And that is the Plaintiffs' First Request for
5 Production of Documents.

6 (Exhibit I was marked.)

7 BY MS. HENRY:

8 Q. Have you ever seen that document
9 before?

10 A. I may have. I don't specifically
11 remember seeing it.

12 Q. And this, Commissioner Parker, I will
13 represent to you, was delivered along with
14 our summons on February the 20th, and
15 requests the Department, you, and -- and
16 Mr. Mays and anyone else in the Department
17 who may be an unnamed party, to provide
18 information relating to and/or reflecting on
19 TDOC's January 8th, 2018 lethal injection
20 protocol and any amendments thereto.

21 Do you see that there in the first
22 paragraph?

23 A. I do.

24 Q. And so we asked you to produce certain
25 documents; is that correct?

1 A. It -- it's -- that's correct.

2 Q. Did you have any role in putting
3 together the documents that were ultimately
4 produced in response to that request --
5 initially produced in response to that
6 request?

7 A. My role, other than turning over any
8 information I would have regarding the
9 request to the officials at the Department --
10 that would have been it. I remember looking
11 and checking my documents and my e-mails and
12 things like that for documents.

13 Q. You recall specifically checking your
14 e-mails?

15 A. I remember checking the -- doing the
16 search and checking the data, yes. I -- I
17 don't remember -- I don't remember the
18 specifics of what I found, if anything --

19 Q. Okay.

20 A. -- but it -- that would have been
21 turned over to the Legal team or the
22 Department.

23 Q. I'm going to show you a document that
24 I will ask the court reporter to mark as
25 Exhibit J.

1 (Exhibit J was marked.)
2 MS. HENRY: And, I'm sorry,
3 Mr. Sutherland, I don't have a copy for you.
4 MR. SUTHERLAND: I'll just scooch
5 over here.
6 BY MS. HENRY:
7 Q. Commissioner Parker, I've handed you a
8 document that is titled Defendant's Response
9 to Plaintiffs' Request for Production of
10 Documents. And it is Letter J.
11 A. Okay.
12 Q. Do you see that there?
13 A. I do.
14 Q. Have you seen that document before?
15 A. I may have. I don't specifically
16 recall.
17 Q. And if you would take a moment, sir,
18 to review the attachment to Exhibit J.
19 A. (Witness reviews document.) Okay.
20 Q. Does the attachment to Exhibit J
21 appear to be the Lethal Injection Execution
22 Manual, Execution Procedures For Lethal
23 Injection?
24 A. It does.
25 Q. And is that the revision that is

1 January 8th, 2018?

2 A. It is.

3 Q. And does that -- is that document 112

4 pages in length?

5 A. (Witness reviews documents.)

6 Yes.

7 Q. And does that document appear to be

8 the same document which is as Attachment A to

9 the Amended Complaint, which is -- the

10 Amended Complaint is Deposition Exhibit D?

11 A. Uh-huh, it appears to be, yes.

12 Q. So in response to our Request for

13 Production of Documents, you provided us a

14 copy of the Lethal Injection Manual, which we

15 had already attached as an attachment to our

16 Complaint; is that correct?

17 A. Uh-huh, that's correct.

18 Q. And that Request for Production of

19 Documents -- or that response to our Request

20 for Production of Documents is dated

21 April 6th, 2018; is that correct?

22 A. What's dated April? I'm sorry. I

23 missed your question.

24 Q. Sure. If you'll turn to Page 3 of

25 Exhibit J --

1 A. Uh-huh.
2 Q. -- for the Certificate of Service.
3 A. (Witness complies.)
4 Q. Do you see there that the document is
5 dated April the 6th, 2018?
6 A. (Witness reviews documents.)
7 Q. The page before that.
8 A. This page (indicating)?
9 Q. Yes.
10 A. I do, uh-huh.
11 Q. All right. So on April the 6th, 2018,
12 in response to our Request for Production of
13 Documents regarding the January 8th, 2018
14 protocol, the only documents provided to
15 Plaintiffs' counsel was a copy of the Lethal
16 Injection Manual that we already had; is that
17 correct?
18 A. That's correct.
19 Q. As we refer to this manual throughout
20 today's execution [sic], can we agree that
21 the word "manual" or "protocol" is
22 synonymous?
23 A. Yes.
24 Q. So if you or I say "manual" or we say
25 "protocol," we agree that we are talking

1 about this same January 8th, 2018 document;
2 is that correct?
3 A. That's correct.
4 Q. At no time today will I be asking you
5 about the electrocution protocol, okay?
6 A. Okay.
7 Q. And that's because I would be
8 prohibited from doing so, and Mr. Sutherland
9 would object vociferously, okay?
10 MR. SUTHERLAND: I don't know
11 about vociferously.
12 BY MS. HENRY:
13 Q. It's not because I don't want to.
14 A. All right.
15 Q. All right. So when we talk about this
16 manual, if we could look at Page 1 of the
17 manual.
18 A. (Witness complies.)
19 Q. And the first sentence states: "This
20 manual contains a summary of the most
21 significant events and departmental
22 procedures to be followed in the process of
23 carrying out the orders of the Tennessee
24 Supreme Court regarding the imposition of
25 death by lethal injection."

1 What do you mean by "summary"?

2 A. I think that it's basically a -- well,
3 a summation. I -- I don't know to say it
4 without saying summary again. A summation of
5 things that occur during the process of
6 carrying out lethal injection.

7 Q. I want you to turn --

8 A. And let me just say that I -- when I
9 say "summary" or -- or "summation," it's not
10 -- it's obvious that it's not going to be
11 all-inclusive of every single thing that
12 occurs, but I think it's a best attempt at
13 providing a manual that describes the
14 process.

15 Q. So let me see if I'm hearing you
16 correctly. And so -- I don't want to
17 misunderstand. I -- I think you're using
18 "summary" the way that I understand
19 "summary," but I just want to make sure that
20 we're on the same page. What you're saying
21 to me is that there are things that you're
22 going -- and when I say "you," I mean the
23 Department, the individuals involved with the
24 execution. There are steps that must be
25 taken in every lethal injection, and you

1 can't write everything down?

2 A. True.

3 Q. And so you've put together --

4 A. Well, I don't know that you can't, but

5 we -- we -- we have not, but, yes.

6 Q. Okay. So this is not -- this written

7 document is not every single thing that's

8 done in an execution, but it's a summary?

9 A. I think it's, again, the most

10 significant events that occur.

11 Q. All right. The next sentence there,

12 sir, states: "It contains a detailed listing

13 of some of the duties and responsibilities of

14 certain key departmental personnel." And of

15 course I put some emphasis on the word

16 "some," because to me the word "some" means

17 that there are other duties that are not

18 listed in the manual. Is that a fair

19 interpretation?

20 A. Other duties of?

21 Q. Other duties and responsibilities of

22 certain key department personnel that are not

23 listed.

24 A. Could be, yes.

25 Q. Does the word "some" indicate to you

1 that not all are listed?

2 A. Right, sure.

3 Q. Okay. The first sentence of the
4 second paragraph states: "It will be used as
5 a guideline for the Warden to assure that
6 operational functions are properly planned
7 with staff who have designated
8 responsibilities in performing a judicially
9 ordered execution by lethal injection."

10 And, again, sir, I want to direct your
11 attention to the word I put emphasis on,
12 which is "guideline." To me, "guideline"
13 means it's a guide, but the Warden is free to
14 use his own discretion in carrying out the
15 execution. He's guided by it, but ultimately
16 he's in charge with how the execution will
17 move forward?

18 A. Well, the Warden has certain
19 responsibilities in regard to the protocol,
20 as does the Commissioner of the Department,
21 who is ultimately responsible for the overall
22 administration of -- of the -- of executing
23 offenders.

24 Q. So what does "guideline" mean?

25 A. I think it's a -- it -- as much as

1 you've said, a guide that gives instructions
2 and clarification in some areas and that --
3 that can be used as a guide.

4 Q. Okay. Other than the Lethal Injection
5 Manual, is the Warden provided with any
6 additional training to understand how he
7 should exercise his role in a lethal
8 injection should an event arise that's not
9 covered in the manual?

10 A. The execution protocols is the primary
11 instruction or guide. Other than that and my
12 involvement in -- in consultation with the
13 Warden.

14 Q. Okay. And what would be the basis of
15 your training to assist the Warden in
16 understanding how to discharge his duties
17 under the Lethal Injection Manual?

18 A. Specifically as related to what
19 procedure?

20 Q. As related to his responsibilities in
21 carrying out a lethal injection.

22 A. It would be -- what my understanding
23 of the protocol itself, my understanding of
24 the processes and procedures that each
25 individual is responsible for in -- in the

1 protocol itself, and then basically my role
2 as Commissioner of the Department who is
3 ultimately responsible for the administration
4 of the protocol.

5 Q. So other than this document, though,
6 what I'm trying to get at, though, is there
7 any other source of information that you draw
8 upon in order to provide wisdom and guidance
9 to the Warden in his duties of carrying out a
10 lethal injection under the protocol?

11 A. Well, as Commissioner, there's -- I
12 think my communications or my, I guess,
13 discussions that I've had with other
14 officials, other professionals both in
15 Tennessee and other areas, other States
16 regarding executions and the responsibility
17 as the Commissioner helps in that process.
18 Helps me make decisions and provides
19 information that I would use in making
20 decisions.

21 Q. So am I hearing you say that as a
22 corrections professional, you have networked
23 and spoken with other corrections
24 professionals who faced lethal injection
25 executions, and obtained knowledge from them

1 about how to conduct an execution?

2 A. I have -- not about how to conduct an
3 execution.

4 Q. Okay.

5 A. About their experiences, things
6 regarding executions. So, yes, I have spoken
7 with other officials in other states.

8 Q. Has that been at conferences?

9 A. It's been at conferences. It's been
10 personal discussions, one-on-one discussions.
11 It's been in several ways, not just at
12 conferences.

13 Q. Okay. So in addition to conferences,
14 one-on-one discussions on the phone?

15 A. Possibly.

16 Q. And by e-mail?

17 A. No.

18 Q. By site visits?

19 A. No. Not site -- not -- not site
20 visits for the particular -- to attend an
21 execution. No, that's not the case.

22 Q. So you've not traveled to other states
23 to attend executions?

24 A. I have not.

25 Q. Has any -- without telling me names or

1 where, but has anyone in the Department who's
2 currently serving in the Department attended
3 executions in other states?

4 A. I believe they have.

5 Q. And do you know whether those
6 executions that these Department employees
7 have attended involved the use of the drug
8 midazolam?

9 A. I'm not sure about that.

10 Q. Do you have any knowledge as to what
11 sort of drug was used?

12 A. Not specifically, not at this point, I
13 do not.

14 Q. Do you have a way of determining what
15 kind of an execution they attended?

16 A. Not without asking them.

17 Q. Okay. Was it -- is it more than one
18 employee?

19 A. I'm not sure about that.

20 Q. Do you know whether Department of
21 Corrections staff -- and I'm sorry for my
22 wording; I'm trying to not to identify
23 anybody --

24 A. That's okay.

25 Q. -- by gender.

1 Do you know whether or not the
2 Department of Corrections staff member or
3 members who have attended an execution
4 attended an execution that used a three-drug
5 protocol?

6 A. I'm not sure.

7 Q. And so then I would assume you don't
8 know if it involved a one-drug protocol?

9 A. Exactly.

10 Q. Or a two-drug protocol?

11 A. Right.

12 Q. What was the purpose of sending the
13 Department of Correction member or members to
14 view an execution in another state?

15 A. So let me say that -- well, I'll
16 answer it. I don't -- I don't know.

17 Q. Okay.

18 A. At the time, I was not the
19 Commissioner, so I'm not sure about that.

20 Q. Okay. So this is an event that
21 occurred prior to you assuming your role as
22 Commissioner of Correction?

23 A. That's correct.

24 Q. So earlier I asked you about whether
25 or not you gained information from another

1 Department by site visit, and you clarified
2 for me that certainly not a site visit to
3 attend an execution, but that begs a certain
4 question. So have you traveled and had
5 in-person meetings at other Department of
6 Corrections regarding their lethal injection
7 protocols?

8 A. Well, not for the specific purpose of
9 inquiring about lethal injection protocols.

10 I visit a lot of states. I talk to a
11 lot of people. And I would just say that the
12 -- most of the -- most of the commissioners
13 and directors of corrections in America, this
14 is a discussion that comes up quite often
15 because of the difficulty in obtaining lethal
16 injection chemicals and them not being
17 available. It's a discussion that comes up
18 quite often. So it's -- it's a -- it's one
19 of those common subjects that --

20 Q. Okay.

21 A. -- comes up.

22 Q. So at this point, I just want to put
23 -- I want to ask Mr. Sutherland the question
24 before I ask you the question.

25 A. Okay.

1 Q. Because I think I anticipate that he
2 would object.

3 A. Okay.

4 MS. HENRY: Foso, Mr. Sutherland,
5 at this point I would want to ask
6 Commissioner Parker which Departments of
7 Correction he has consulted with.

8 MR. SUTHERLAND: Yes.

9 MS. HENRY: And I would assume you
10 would object?

11 MR. SUTHERLAND: I will instruct
12 him not to answer based on the Court's
13 April 24th order.

14 MS. DAVIS: May.

15 MR. SUTHERLAND: I'm sorry. I was
16 in the wrong date. May 24th, 2018,
17 10:39 a.m., based on the second paragraph on
18 Page 20 that says: "While the Deponents may
19 generally describe their efforts to obtain
20 Protocol A, including whether Protocol A was
21 obtained, and if not, the reasons why it
22 could not be obtained, the scope of this
23 discovery shall not extend to the identity of
24 any suppliers, pharmacies, manufacturers,
25 retailers, wholesalers, distributors, or

1 other sources or suppliers, or any agency,
2 institution, or party, including Departments
3 of Corrections of other states, from which it
4 has or has attempted to obtain
5 pentaobarbital."

6 So I would instruct him not to
7 answer based on that.

8 MS. HENRY: And so given
9 Mr. Sutherland's objection, I will state for
10 the record that we disagree with
11 Mr. Sutherland's interpretation of the
12 Court's order.

13 BY MS. HENRY:

14 Q. And that we believe that we are
15 entitled to inquire as to States that you
16 have had general discussions with about the
17 ability to obtain pentaobarbital and other
18 execution drugs for execution and that we
19 would want to ask you the specific names of
20 places that you have consulted. And we
21 believe we're entitled to do so under the
22 Court's order.

23 Mr. Sutherland has instructed you not
24 to answer the question.

25 MS. HENRY: And I'm going to ask

1 the court reporter to please certify the
2 question.

3 BY MS. HENRY:

4 Q. We'll go to court on June 12th and
5 make our case in front of the judge.

6 A. Okay.

7 Q. And if she orders that you are to
8 respond, we'll all gather back together
9 again, okay?

10 A. Okay.

11 Q. Although for a much briefer time at
12 that point, I'm sure.

13 So without naming any of the
14 institution -- other departments that you
15 have had conversation with, is it a fair
16 statement that you have discussed with other
17 Department of Correction officials
18 difficulties in obtaining lethal injection
19 drugs?

20 A. It's fair to say that I have
21 communicated with other officials in other
22 states who would have knowledge of the
23 difficulties in obtaining lethal injection
24 chemicals, yes.

25 Q. And would those chemicals include

1 pentaobarbital?

2 A. Yes.

3 Q. And would they -- that include the
4 active pharmaceutical ingredient or API
5 necessary to compound pentaobarbital?

6 A. Yes.

7 Q. Would that also include difficulties
8 in obtaining midazolam?

9 A. Yes.

10 Q. And would that also include
11 difficulties in obtaining vecuronium bromide?

12 A. Yes.

13 Q. Would that include difficulties in
14 obtaining potassium chloride?

15 A. Yes.

16 Q. Would that include difficulties in
17 obtaining saline?

18 A. That is not a discussion that we
19 have -- and that I have -- that I can recall
20 having with other officials, the difficulty
21 in obtaining saline.

22 Q. All right. Are you aware that there's
23 a national shortage on saline?

24 A. There is -- there's been -- I've heard
25 people in the Department talk about that, but

1 my wife is a -- is a nurse practitioner, so
2 I've heard her say that.

3 Q. Okay.

4 A. So -- but that's basically my
5 knowledge.

6 Q. When people in the -- I'm sorry. I
7 didn't mean to cut you off.

8 A. No, that's okay.

9 Q. When people in the Department have
10 discussed the shortage of saline, what has
11 that been in reference to?

12 A. Our issues at DeBerry Special Needs
13 facility would -- caring for the inmates that
14 are sick there and would have issues from
15 time to time finding saline. That's
16 basically it.

17 Q. You mentioned DeBerry Special Needs
18 facility. So this would probably be a good
19 point to have you state what DeBerry Special
20 Needs facility is.

21 A. It is the facility in Nashville that
22 houses the main medical facility for the
23 Department, cares for the sickest offenders
24 we have, basically.

25 Q. The sickest offenders, is that what

1 you said?

2 A. Yes, I'm sorry.

3 Q. So is that a prison -- the prison

4 hospital?

5 A. It is.

6 Q. All right. Does the -- does DeBerry

7 Special Needs have an on-site pharmacy?

8 A. We have a pharmacy -- central pharmacy

9 at DeBerry, yes.

10 Q. And does that central pharmacy have a

11 DEA license?

12 A. They do.

13 Q. Are they able to obtain controlled

14 substances, purchase controlled substances?

15 A. They do.

16 Q. And if the Department were to obtain

17 lethal injection chemicals, would they have

18 to be delivered to the pharmacy at DeBerry

19 Special Needs before being transferred to

20 Riverbend?

21 A. I don't know that they would have to.

22 I'm not sure.

23 Q. Are they --

24 MR. SUTHERLAND: I'm going to

25 object, relevance.

1 BY MS. HENRY:

2 Q. You can go ahead and answer.

3 A. The -- it's my understanding that --
4 that has occurred. And I believe that's the
5 process, yes.

6 Q. Commissioner, it is now a quarter till
7 11:00 by my watch. And for me, this would be
8 a good point to take a break. Is that okay
9 with you?

10 A. That's fine.

11 Q. All right.

12 MS. HENRY: We'll take a break and
13 go off the record.

14 (Brief recess observed.)

15 MS. HENRY: All right. It is
16 11:01 by my watch, and we're back on the
17 record.

18 BY MS. HENRY:

19 Q. So, Commissioner, thank you for
20 allowing me to take a little break.

21 A. Sure.

22 Q. And, of course, what normally happens
23 when you take a little break and there are a
24 lot of lawyers in the room, they have some
25 ideas of some questions that I missed. So

1 I'm going to try and get some real quick, and
2 then we'll move along, okay?

3 A. Okay.

4 Q. So when we broke, we were discussing
5 Page 1 of the Lethal Injection Manual, and I
6 was asking you about the use of the word
7 "guideline" and that the manual is a
8 guideline for the Warden.

9 Is the Warden free to deviate from the
10 guideline?

11 A. Well, how would you -- give me an
12 example. How -- what do you mean, deviate?

13 Q. Is the Warden free to -- I don't know
14 how he might deviate. That's a good
15 question.

16 Is he free to order -- I'll just give
17 you an example and get right to it. If he
18 were to administer -- signal to the
19 Executioner to administer the midazolam and
20 conduct a consciousness check, as is defined
21 in the manual, and determine that the inmate
22 responded in some way that was ambiguous as
23 to whether or not he was sedated or not
24 sedated, would the Warden be free to signal
25 the Executioner to move forward with the

1 execution?

2 A. No, that would not be following the
3 protocol.

4 Q. Would the Warden be free to not order
5 execution drugs as he is directed to do by
6 the execution people?

7 A. No. The ordering of -- let me just --
8 the ordering of the drugs, again, by the
9 Warden or his designee, it's obvious the
10 Department has to order the chemicals. So if
11 you're asking me if the Warden decided that
12 the expiration dates were checked and our
13 chemical, say, for instance was no good or
14 not -- not current, for him just to
15 arbitrarily say, "I'm not going to order the
16 drugs," no, that would not be -- that would
17 not be acceptable either.

18 Q. Does the Warden have to receive
19 instruction from someone in order to order
20 the drugs?

21 A. The Warden and his designee is
22 responsible for that, and the Warden would
23 work in conjunction with the staff to ensure
24 that the drugs were ordered.

25 Q. Would you -- let me give you this

1 scenario, Commissioner. Let's say, for
2 example, the Warden signals the Executioner
3 to inject the first protocol involving
4 midazolam and conduct the consciousness check
5 as that is defined in the manual, and he
6 determines that the inmate is responsive.

7 You follow me so far?

8 A. I do.

9 Q. And then he orders a second -- the
10 Executioner to move to the second set and to
11 give a second dose of midazolam.

12 A. Uh-huh.

13 Q. You following me?

14 A. Uh-huh.

15 Q. Is that a "yes"?

16 A. Yes, I'm sorry.

17 Q. And then the protocol does not require
18 the Warden to conduct a consciousness check
19 at that point; is that correct?

20 A. It's my understanding the
21 consciousness check would be conducted after
22 the first chemicals are injected, which would
23 be the 500 milligrams of midazolam,
24 regardless if it's at first or second -- the
25 red set or blue set, there's a consciousness

1 check made at that point to determine that
2 the offender is unconscious.

3 Q. Would you agree with me that the
4 second consciousness check is not in the
5 Lethal Injection Manual?

6 A. I'm not -- I'd have to go back and
7 take a look at it.

8 Q. Sure. Let's just take a quick minute
9 to do that. I'm going to direct your
10 attention to Page 70 of the manual. And at
11 the top of the page, it reads "7:10 p.m.,"
12 and this is Day 3 of the evening schedule for
13 Protocol B. And Paragraph 6 instructs the
14 Warden to conduct a consciousness check after
15 the first 500 milligrams of midazolam is
16 administered.

17 Do you see that?

18 A. Uh-huh.

19 Q. "Yes"?

20 A. Yes. I'm sorry.

21 Q. And the last sentence states: "If the
22 condemned inmate is responsive, the Warden
23 shall direct the Executioner to switch to the
24 secondary IV line. See Contingency Issues on
25 Page 73."

1 Is that correct?

2 A. That's correct.

3 Q. So if we turn to Page 73 -- and that's

4 the Contingency Issues page; is that correct?

5 A. Correct.

6 Q. And that page applies for both

7 Protocol A and Protocol B?

8 A. Yes.

9 Q. And I don't think we've said it so far

10 today, but Protocol A is the pentaobarbital

11 protocol; is that correct?

12 A. Yes.

13 Q. And Protocol B is the three-drug

14 protocol involving midazolam; is that

15 correct?

16 A. That's correct.

17 Q. Both protocols are still active in the

18 Department of Correction; is that correct?

19 A. Yes.

20 Q. Either one could be used?

21 A. Correct.

22 Q. If the Department obtains drugs prior

23 to any execution of the 33 Plaintiffs,

24 Protocol A is available; is that correct?

25 A. If we were to be able to obtain the

1 drugs for Protocol A, it would be available,
2 yes.

3 Q. Okay. And if you were able to obtain
4 the drugs for Protocol B, it would be
5 available; is that correct?

6 A. Yes.

7 Q. So Tennessee has a choice built into
8 the lethal injection protocol; is that
9 correct?

10 A. We have a choice based on the
11 availability of the -- of the chemicals.

12 Q. Now, I want to get back to that
13 question in a minute, the choice based on
14 availability. But I want to stick with where
15 we were right now, about what the Warden is
16 to do in a contingency.

17 The first deals with IV line
18 alternatives, and we're not dealing with that
19 situation if we have to go to the second set,
20 correct? So we'll agree that's not
21 applicable?

22 A. Okay.

23 Q. The second: Interruption of the
24 delivery of the lethal injection drugs in the
25 primary IV line." It states: "The

1 Executioner switches to the secondary IV line
2 and starting with Syringe No. 1 (blue) begins
3 the administration of the second set of
4 syringes using the reserve tray."

5 Do you see that there?

6 A. I do.

7 Q. And of the other possible contingency
8 that could be followed is the last one listed
9 on the page: "Repeating the Lethal Injection
10 Process."

11 "If the inmate is not deceased after
12 the initial set of syringes has been
13 injected and [sic] the physician has returned
14 to the designated waiting area."

15 When I stop after the end of that
16 first sentence, that doesn't really seem to
17 apply to our scenario either, as to what he's
18 supposed to do, correct?

19 A. As to who is supposed to do?

20 Q. As to the Warden.

21 A. Warden? No.

22 Q. So when we move to the secondary line,
23 it appears that that second contingency issue
24 is what is to be followed if the inmate is
25 responsive after the delivery of the first

1 dose of midazolam; is that correct?

2 A. I think the second applies, but I also
3 think part of the third would apply where we
4 talk about repeating the lethal injection
5 procedure with the second set of syringes
6 which would -- in my interpretation would
7 include the -- the processes that apply to
8 using the -- the second set of chemicals.

9 Q. So you read the word "repeat" there as
10 the ex-- the Warden goes back to Paragraph 6
11 and repeats it exactly the same?

12 A. Well, I think -- what I'm saying is
13 that when we say "repeat the lethal injection
14 procedure," I agree there -- there's nothing
15 mentioned in the second paragraph regarding a
16 consciousness check. But I think when you go
17 to the second set of syringes and begin the
18 process again with the first drug being
19 midazolam, that you would follow the same
20 procedure as laid out in the protocol.

21 Q. So --

22 A. Which would include a consciousness
23 check.

24 Q. So you would agree with me, then,
25 that's an ambiguity in the written protocol

1 as to what the Warden should do in that
2 situation?

3 A. I think it could be ambiguous to
4 someone who is not familiar with the process.
5 I think to the people who carry this process
6 out, that's -- that's the intent. I'll say
7 that.

8 Q. All right. Have you specifically
9 counseled the Warden on the necessity of
10 conducting a second consciousness check
11 should the need arise?

12 A. I don't -- I don't know that me and
13 the Warden specifically have had that
14 conversation in particular.

15 Q. And during an execution, it's my
16 understanding that you would be up in the
17 Warden's office, not back in the execution
18 chamber itself; is that correct?

19 A. Correct.

20 Q. And so in the execution chamber during
21 the execution process, once it begins, the
22 Warden is in charge; is that correct?

23 A. That's -- well, the Warden is in
24 charge of carrying out the process, the
25 mechanics of the -- of the protocol.

1 Q. Are you aware, Commissioner Parker, of
2 instances where an inmate was not rendered
3 insensate and unresponsive after a second
4 dose of midazolam?

5 A. In anywhere? Are you talking about
6 across the United States?

7 Q. Yes, anywhere in the United States.

8 A. I have read reports or -- news reports
9 and all of what was reported as inmates who
10 were not completely unconscious at the time,
11 yes.

12 Q. Okay. And does our protocol give the
13 Warden any guidance as to what he should do,
14 if after the administration of a second dose
15 of midazolam, the inmate is still responsive?

16 A. I don't know that the -- that the
17 protocol specifically says what you do. The
18 procedure is he would notify the
19 Commissioner.

20 Q. And what would happen then?

21 A. The -- if -- if after the second dose
22 or the second round of drugs and the second
23 check of midazolam and the offender was still
24 conscious, then I would delay the execution,
25 stop the execution.

1 Q. So there would be no further drugs?
2 A. No.
3 Q. No? It's two sets and that's it?
4 A. Exactly.
5 Q. All right. Does the Warden know that?
6 A. I'm assuming he does. He should know,
7 but that's -- that's the protocol. That's my
8 procedure.
9 Q. Okay. Is that written down anywhere?
10 A. No, not that I'm aware of.
11 MR. KISSINGER: Excuse me, I'm
12 sorry.
13 MS. HENRY: Let the record reflect
14 that Mr. Kissinger is having a coughing fit.
15 BY MS. HENRY:
16 Q. Turning back to Page 1 of the Lethal
17 Injection Manual, it indicates that
18 Section 8, "Perimeter security is
19 confidential and not subject for public
20 release."
21 So other than Section 8, was the
22 entire Lethal Injection Manual provided to
23 Plaintiffs' counsel?
24 A. With the -- it's my understanding it
25 was with the exception of this Section 8.

1 Q. Okay. And can I ask you to turn now,
2 sir, to Page 6 of the protocol, the
3 January 8th, 2018 protocol?

4 A. Okay.

5 Q. Does that page bear your signature,
6 sir?

7 A. It does.

8 Q. And what does your signature on that
9 page signify?

10 A. It signifies that the protocol is the
11 official protocol of the Department of
12 Corrections and my signature as Commissioner
13 verifies that.

14 Q. So does your signature indicate that
15 you have adopted the protocol as the
16 Commissioner of the Department of Correction?

17 A. Yes.

18 Q. And as they say, the buck stops with
19 you?

20 A. Yes.

21 Q. And so you are responsible for the
22 content of this protocol?

23 A. I am responsible, yes.

24 Q. Okay. If I could ask you, sir, to now
25 turn -- let me ask you this before I back up.

1 The protocol designates
2 responsibilities in a lethal injection
3 according to a person's position; is that
4 correct?

5 A. I don't understand your question.

6 Q. So, for example, the Warden has
7 certain responsibilities, the Associate
8 Deputy Warden of Security has certain
9 responsibilities, the Commissioner has
10 certain responsibilities; is that correct?

11 A. That's correct.

12 Q. And those particular positions are
13 designated by individuals who are known; is
14 that correct?

15 A. That's correct.

16 Q. By virtue of the Warden assuming the
17 role of Warden of the Riverbend Maximum
18 Security Institution, the fact that he's
19 going to oversee an execution is known?

20 A. Correct.

21 Q. Publicly?

22 A. Correct.

23 Q. And your role is known publicly?

24 A. Correct.

25 Q. And the Associate Deputy Warden's role

1 is known publicly?

2 A. Yes.

3 Q. There are other individuals who are

4 described herein by titles that are unique to

5 being a part of the lethal injection team.

6 Would you agree with me?

7 A. Yes. That's correct.

8 Q. So, for example, the Lethal Injection

9 Recorder, Death Watch Supervisor; is that

10 correct?

11 A. That's correct.

12 Q. The Institutional Chaplain is known;

13 is that correct?

14 A. That position is known, yes.

15 Q. But that person doesn't take part in

16 carrying out an execution; he's -- he or she

17 is there really to counsel the inmate; is

18 that --

19 A. Which is part of the process, but,

20 yes, I agree.

21 Q. They're not going to take part in

22 delivering the chemicals?

23 A. Exactly.

24 Q. And they won't strap him down?

25 A. Exactly.

1 Q. There is a Physician's role; is that
2 correct?

3 A. That's correct.

4 Q. And that person is known to you, but
5 is kept -- his name -- his or her name is
6 kept confidential; is that correct?

7 A. That's correct.

8 Q. Does the Department currently have a
9 contract with a physician who is willing to
10 participate in the execution scheduled for
11 August 9th of Billy Ray Irick?

12 A. I believe -- I would have to check
13 with counsel on that to -- to be sure.

14 Q. And is that because it is General
15 Counsel's role to identify that person and to
16 secure their contract?

17 A. It's because General Counsel would
18 handle contracts of a legal nature regarding
19 the process and -- which would, you know, be
20 in their purview. And so to answer your
21 question correctly, I would need to talk to
22 counsel.

23 Q. All right. So you don't currently
24 know if there's a physician under contract
25 for the upcoming execution on August the 9th?

1 A. It's -- I am -- I would say 95 percent
2 sure that it is. I believe that's taken
3 place, but I would -- again to be certain, I
4 would have to talk with counsel.

5 MR. SUTHERLAND: Just note my
6 objection for the record. The protocol calls
7 for a physician. And so for a facial
8 challenge, we assume for the purposes of the
9 protocol there is a physician, so this line
10 of questioning is irrelevant.

11 MS. HENRY: And I would state for
12 the record that the fact that there is a
13 physician involved is directly relevant to
14 the question of availability.

15 BY MS. HENRY:

16 Q. But we're -- you've already answered
17 my question, so we'll move on.

18 You have IV Team members; they're
19 confidential. Facility Maintenance,
20 Extraction Team Members, those are all
21 confidential employees; is that correct?

22 A. Yes.

23 Q. But they attend the monthly
24 rehearsals; is that correct?

25 A. Yes.

1 Q. How many monthly rehearsals have you
2 attended since being Commissioner?

3 A. I don't know the exact number. I
4 would just say approximately two or three,
5 probably. Four, maybe. I don't know. The
6 last one I remember was a couple months ago.
7 But I -- I don't remember -- I don't keep the
8 exact dates on those.

9 Q. Okay. So I will represent to you,
10 Commissioner Parker, that in response to
11 Tennessee Public Records Act Requests on my
12 behalf, the Department has produced exactly
13 one rehearsal of the three-drug protocol
14 which occurred on February 20th of 2018.

15 Are you aware if there have been more
16 than one rehearsal of the three-drug
17 protocol?

18 A. So define "rehearsal."

19 Q. Well, why don't you tell me what
20 rehearsal means to you?

21 A. Well, here's the reason I ask the
22 question.

23 Q. Yeah.

24 A. The facility has the process of going
25 over the protocol monthly, okay? They do

1 that often there. There are occasions where
2 the Department of Corrections would complete
3 a full-scale practice rehearsal that would
4 involve outside law enforcement, setting up
5 perimeter, going through all the steps in
6 regards to the complete protocol itself, and
7 that's on a much larger scale than what they
8 do monthly.

9 So obviously when we prepare for an
10 upcoming execution, as Commissioner, I would
11 ask the Warden to conduct those more often,
12 to be -- make people more familiar with the
13 process, more practice, I guess you would
14 say, and that would happen more. The
15 full-scale rehearsal that I think you're
16 referring to is not something that happens
17 every month.

18 Q. Okay.

19 A. So that's the reason I asked for the
20 clarification.

21 Q. Sure. I've heard the phrase "band
22 practice" before. Have you heard the phrase
23 "band practice"?

24 A. I have.

25 Q. And what is "band practice"?

1 A. It's my understanding that that's the
2 term they use for the monthly practice they
3 use at Riverbend.

4 Q. Okay. And I guess what I'm very
5 interested in knowing about is how often the
6 Department gathers together for band practice
7 wherein an individual is actually placed in
8 the same position as an inmate and the
9 Executioner practices pushing the chemicals.

10 A. Okay. Is that a question?

11 Q. How often does that happen?

12 A. It's my understanding that that
13 happens monthly whenever they have the -- go
14 through the process, that that's part of the
15 -- the monthly training.

16 Q. And at -- during the monthly training,
17 is there someone there who's responsible for
18 keeping a recording of everything that
19 happens, just like if they were in an actual
20 execution?

21 A. I'm assuming there -- there is, but
22 specifically, I wouldn't be able to tell you
23 who that is.

24 Q. And so, Commissioner Parker, what I
25 was mentioning earlier is that those sheets

1 have been provided to us from your General
2 Counsel for a band practice session on
3 February 20th of 2018, and we've received no
4 further responses to our Public Records Act
5 Request for such documents, and so I'm
6 wondering have those practice sessions
7 occurred?

8 A. To my knowledge, they have occurred
9 monthly like they're supposed to.

10 Q. To your knowledge, was the three-drug
11 protocol practiced prior to February 20th of
12 2018?

13 A. Oh, I'm sure it was. I'm --

14 Q. When do you believe it was first
15 practiced?

16 A. I don't know for certain. I would
17 have to talk with the Warden. But -- so I
18 don't know the exact date.

19 Q. Would it have been practiced prior to
20 January 8th, 2018?

21 A. I think it would have been -- we would
22 have began that process once we discussed
23 changing the protocol. But, again, I'm not
24 sure. I'd have to go back and check on that.

25 Q. Okay. Could you do that for me?

1 A. Sure.

2 Q. And if those documents exist, would
3 you mind providing them to us?

4 A. What documents?

5 Q. The documents documenting the
6 practices.

7 A. Yes. Yes.

8 Q. You would provide those?

9 A. Yeah, as long as the --

10 Q. Redacted?

11 A. Counsel -- yeah, yeah. My counsel
12 would -- I could talk to them and they would
13 provide it.

14 Q. Okay. Thank you. We appreciate that.
15 From the records that we've seen, the
16 Department continues to also practice
17 Protocol A as well as Protocol B.

18 Is that your understanding?

19 A. I'm not aware of the -- the current
20 practices that's been conducted, I have not
21 been made aware that they're currently
22 practicing Protocol A, which would be the
23 pentobarbital --

24 Q. Okay.

25 A. -- the three-syringe solution or the

1 three -- two drugs -- the two syringes of the
2 drug and the saline flush.

3 Q. And why aren't they practicing
4 Protocol A?

5 A. Well, again, it's the same principle
6 of -- of pushing a drug or delivering a drug
7 through an IV, but the fact that the number
8 of syringes that are laid out in Protocol B
9 is different than Protocol A, and the fact
10 that currently, although, it's ongoing, a
11 search for pentaobarbital -- we've been
12 unable to find it. And I have no reasonable
13 expectation that I'll be able to find it. So
14 that's basically the reason.

15 Q. And your search for pentobarbital is
16 ongoing?

17 A. Absolutely.

18 Q. And so if you're able to secure
19 pentaobarbital prior to August the 9th, 2018,
20 it would be available?

21 A. If we were to be able to find
22 pentaobarbital, a source, and have it
23 available before the execution, yes, it would
24 be available. That -- that Protocol A would
25 be available.

1 Q. And the fact that the members of the
2 Execution Team are practicing Protocol B, the
3 practical difference of that in a practice
4 session means that they are simply pushing --
5 the Executioner is pushing more syringes?

6 A. They're -- they're -- well, yeah, it's
7 a different -- it's a different setup as far
8 as the number of syringes. And it's a
9 different drug, of course. But that's
10 primarily it, yes.

11 Q. Are you confident that by engaging in
12 practice sessions for Protocol B, the
13 Execution Team would be in a position to be
14 able to carry out Protocol A without having
15 to have a whole new practice session?

16 A. Well, let me just say that, yes, I am
17 -- I'm confident in that.

18 Q. Okay.

19 A. Yes.

20 Q. During the practice sessions that
21 you've attended as Commissioner, and even
22 those that you've attended as the Assistant
23 Commissioner of --

24 A. Prisons.

25 Q. -- Prisons, has there been, without

1 identifying him or her, a physician present
2 to provide guidance during the execution
3 process?

4 A. During the practices?

5 Q. The practice session, yes.

6 A. There has.

7 Q. On more than one occasion?

8 A. There has.

9 Q. And what has the purpose -- what role
10 has the physician served in that practice
11 session?

12 A. The role of the physician is to assist
13 with the process; of course, to check the
14 offender for death or signs of death, and to
15 declare the offender deceased. And also to
16 provide guidance or assistance in finding an
17 alternative site for IV if -- if one cannot
18 be found. And possibly even doing a
19 procedure, a cutdown procedure to find an
20 access point.

21 Q. During the practice --

22 A. But.

23 Q. I'm sorry, go ahead.

24 A. They would also -- and, again, the
25 physician is there also to assist in the

1 process.

2 Q. Does the physician provide training or
3 guidance to the Warden as to how to determine
4 whether an inmate is sensate to pain?

5 A. The protocol does not call for that.
6 I think that's an option that, should the
7 Warden need assistance, the physician
8 possibly could do that, but it's not in the
9 protocol.

10 Q. How would the Warden know to exercise
11 that option?

12 A. Well, the -- the Warden would have to
13 make a determination based on his check of
14 the offender to see if he is conscious or
15 not. That would be a decision the Warden
16 would have to make.

17 Q. During the practice sessions, has the
18 physician provided training or guidance as to
19 whether or not the consciousness check, as
20 defined in the protocol, is sufficient to
21 determine whether the inmate is sensate?

22 A. I don't know that that question has
23 been asked of the physician, and I -- not to
24 my knowledge.

25 Q. Does the physician provide training or

1 guidance to the Warden or any member of the
2 Execution Team as to how to recognize signs
3 that the inmate, though initially sedated,
4 has regained the ability to feel pain?

5 A. No.

6 Q. Has the Department sought that
7 training?

8 A. Sought the training from anyone about
9 the --

10 Q. Correct.

11 A. No.

12 Q. Where did the Department obtain the
13 consciousness check? On what basis did the
14 Department decide that the consciousness
15 check as it exists in the protocol is
16 sufficient to determine that the inmate is
17 insensate to pain?

18 A. That was a determination made by the
19 Department of staff, senior members of the
20 staff, in conjunction or in consultation with
21 other people, other individuals. Both
22 professional and administrative -- or senior
23 executive staff from other areas.

24 Q. Individuals outside the state?
25 Outside of State employees?

1 A. Yes, in some cases.

2 Q. Okay. I'll get back to that later,
3 but, again, since we are on a timer, I'm
4 going to move on.

5 And I want to talk about the
6 different --

7 MR. SUTHERLAND: Kelley, if I
8 could interrupt you for just a second. In
9 the event you do decide you want to go back
10 there on Page 21, in the last paragraph, it
11 says that: No questioning is allowed as to
12 "information gathered and considered
13 regarding safeguards against harm caused by
14 any alternative methods and Protocol B."

15 MS. HENRY: And if you look
16 earlier in the order, the Court specifically
17 provides that -- I believe at the bottom of
18 Page 20; I don't have it right in front of
19 me -- that we're permitted to discuss
20 contingency plans and the implementation of
21 Protocol B, but we won't get back there until
22 after lunch, so....

23 BY MS. HENRY:

24 Q. Let's move to Page 25 of the Lethal
25 Injection Manual, if we can. This --

1 Page 25, at the top it says "Commissioner."
2 Is that you?
3 A. That's me, yes.
4 Q. And does that page define your primary
5 role in the execution?
6 A. It does.
7 Q. And can you tell us what your primary
8 role is?
9 A. "To oversee the administration of
10 judicial executions in Tennessee."
11 Q. And is "oversee" then defined by the
12 duties as set forth below?
13 A. I think that covers some of it. It's
14 -- it's -- as you know, it's very broad as
15 far as overseeing the -- the process and the
16 requirements by statute and law.
17 Q. So the first duty is pretty
18 straightforward: "...ten minutes prior to
19 the time scheduled for the execution, the
20 Commissioner will establish telephone contact
21 with the Governor's Legal Counsel."
22 That's pretty straightforward; is that
23 right? Fair to say?
24 A. That's correct.
25 Q. And is that a direct line from the

1 Warden's office into the Governor's --
2 wherever the Governor may be?

3 A. Well, that's a direct communication
4 that I would have with the Governor's legal
5 counsel.

6 Q. Is that a landline or a cell phone?

7 A. It could be both. There's options
8 available for both.

9 Q. Okay.

10 A. Yeah.

11 Q. Do you know if there's a landline
12 available to the Warden in the execution
13 chamber?

14 A. Yes, there's a -- there's a line
15 available that he would contact me in his
16 office.

17 Q. Does that line provide the Warden
18 access outside the institution or only up to
19 the Commissioner's office?

20 A. I'm not sure. I would have to check
21 that. I'm not sure.

22 Q. The second duty there states that your
23 -- that your duty is: "To communicate to the
24 Warden any circumstances that could alter or
25 delay the execution."

1 Can you tell me what that means?

2 A. Well, in my communications with the
3 Governor's legal counsel and with others, if
4 there was any reason to delay or halt the
5 execution, I would communicate that to the --
6 to the Warden.

7 Q. So, for example, a stay of execution?

8 A. Yes.

9 Q. Either from the Court or the Governor?

10 A. Yes.

11 Q. And then the third duty has to do with
12 taking care of the employees who participate
13 in an execution, providing them with Employee
14 Assistance.

15 And we can agree that's not the
16 subject of your deposition --

17 A. Right.

18 Q. -- is that fair to say?

19 A. Yes.

20 Q. Other than these duties -- I know you
21 said it's pretty general -- what else is
22 encompassed in your responsibilities to
23 oversee the administration of a judicial
24 execution?

25 A. Well, again, as far as the oversight

1 of the employees that participate in the
2 execution process, keeping the Governor's
3 Office informed to the best of my ability,
4 ensuring that policies and protocols are
5 followed, general oversight of the entire
6 process. Ensuring that practice sessions are
7 -- are conducted and that the Department is
8 prepared to carry out the execution as
9 ordered by the Court. Working with staff
10 members and other people to do everything
11 possible to obtain the chemicals that have
12 become so difficult to find.

13 So there's a lot of -- there's a lot
14 of different areas that fall -- as far as
15 oversight.

16 Q. And that's enough that could keep you
17 busy 40 hours a week every week for a year,
18 it sounds like. So do you delegate a lot of
19 that responsibility to individuals you trust?

20 A. In my job, there's some -- yeah, it's
21 delegated in a lot of cases. In some cases,
22 you know, it's -- sometimes I have a tendency
23 to delegate, and then I get back involved. I
24 have trouble keeping my hand out of that.

25 Q. I'm familiar with that problem.

1 A. Yeah. But it's -- it's safe to say
2 that it is delegated.

3 Q. And fair to say in any team, the
4 people you delegate to are individuals who
5 you trust?

6 A. Yes.

7 Q. And so you take their word when they
8 report to you?

9 A. Well, let me -- yeah. It's kind of
10 like Ronald Reagan once said, "Trust but
11 verify."

12 Q. Yeah.

13 A. But you -- you have to trust, yes, to
14 a certain extent.

15 Q. Otherwise nothing would ever get done?

16 A. Correct.

17 Q. Now, if we could turn now, sir, to
18 Page 13 of the protocol. And those are the
19 duties of the Warden; is that correct?

20 A. I'm having trouble seeing this. My
21 contacts are....

22 Yes, it is.

23 Q. All right. And the Warden has 15
24 specified duties during an execution; is
25 that --

1 A. That's correct.

2 Q. Okay. And then on Page 70 -- or I'm
3 sorry, 14, we have the Associate Warden of
4 Security; is that correct?

5 A. That's correct.

6 Q. And he has seven designated duties; is
7 that correct?

8 A. That's correct.

9 Q. And he would, if called upon, fill the
10 role of Warden should the Warden be unable to
11 carry out his duties; is that correct?

12 A. That would be an option.

13 Q. Who else would fill in for the Warden
14 other than the Associate Deputy Warden of
15 Security?

16 A. Well, again, if -- there's a lot of
17 circumstances. Say, for instance the Warden
18 becomes ill --

19 Q. Right.

20 A. -- or the Assistant Warden, some issue
21 was going on, I would have the authority to
22 appoint somebody as Acting Warden for that
23 process. And it would more than likely be
24 somebody in the senior management role that I
25 would place in that position, should that be

1 necessary.

2 Q. So if the Warden took ill and the
3 Associate Deputy Warden was unwilling or
4 unable to fulfill the role of Warden, you
5 could appoint somebody to fulfill that role?

6 A. I could.

7 Q. And would that be someone who had
8 attended the practice sessions?

9 A. I would not want to appoint somebody
10 or -- in an acting position, certainly, to
11 carry out an execution that has not
12 participated -- or familiar with -- with the
13 protocol.

14 Q. And that process that you've just
15 discussed, the ability to appoint an Acting
16 Warden, that's not addressed anywhere within
17 the Lethal Injection Manual, is it?

18 A. No, it's not.

19 Q. When we look at the Warden's role in
20 carrying out a lethal injection under
21 Protocol A, if you could turn with me, sir,
22 to Page 20 of the protocol. I'm sorry, Page
23 36 -- 35. Where is my eyes -- 35 of the
24 protocol.

25 A. Okay.

1 Q. Where it says "Protocol A:

2 Procurement, Storage, Accountability, and
3 Transfer of the Chemical.

4 Do you see that there?

5 A. Yes, uh-huh.

6 Q. Under the first paragraph,
7 Procurement, it states: "Upon receipt of an
8 order setting an execution date, the Warden
9 or his designee shall contact a physician to
10 obtain the physician's order for the LIC."

11 Do you see that sentence there?

12 A. I do.

13 Q. And "LIC" means lethal injection
14 chemical, correct?

15 A. Yes.

16 Q. And under Protocol A, that would be
17 pentobarbital; is that correct?

18 A. Correct.

19 Q. And that could be compounded
20 pentobarbital or manufactured pentobarbital,
21 correct?

22 A. Correct.

23 Q. Is the physician who is referred to in
24 that sentence the same physician who would
25 attend an execution, or is that a different

1 individual, without giving me a name?

2 A. It could be. I don't know that that
3 limits us to one particular physician, but it
4 could be.

5 Q. Okay. It could be, but it doesn't
6 have to be?

7 A. Correct.

8 Q. Okay.

9 MS. HENRY: Just one second.

10 BY MS. HENRY:

11 Q. I'm going to hand you now, sir, a
12 packet of orders that I'm going to ask the
13 court reporter to mark as Deposition
14 Exhibit K.

15 (Exhibit K was marked.)

16 MS. HENRY: And, I'm sorry,
17 Mr. Sutherland, I don't have a copy for you,
18 but I think you've seen these before.

19 MR. SUTHERLAND: Whatever.

20 I'm just kidding.

21 BY MS. HENRY:

22 Q. So in Deposition Exhibit K, there's a
23 three orders of the Tennessee Supreme Court.
24 The first page is State of Tennessee versus
25 Billy Ray Irick, dated January 18th, 2018.

1 Do you see that there, the file stamp in the
2 upper right-hand corner?

3 A. Yes, I do.

4 Q. And in this order, the Court set an
5 execution date for Mr. Irick of
6 August the 9th, 2018.

7 Do you see that at the bottom of the
8 page, midway through the last paragraph?

9 A. Yes.

10 Q. And the second page of this exhibit is
11 an order from the Tennessee Supreme Court and
12 State of Tennessee versus Edmund Zagorski
13 with a file stamp in the upper right-hand
14 corner of March 18th, 2018.

15 Do you see that there?

16 A. I do.

17 Q. Do you see that Mr. Zagorski had an
18 execution date set of October 11th, 2018 by
19 the Court on that date?

20 A. Yes.

21 Q. And the third page is an order from
22 the Tennessee Supreme Court and State of
23 Tennessee versus David Earl Miller with the
24 file stamp date of March 18, 2018.

25 Do you see that there?

1 A. I do.

2 Q. And do you see that the Court set an
3 execution date for Mr. Miller of December
4 the 6th of 2018; is that correct?

5 A. That's correct.

6 Q. Under Protocol A, upon the Tennessee
7 Supreme Court setting of those execution
8 dates, the Warden is to have obtained a
9 physician's order for the LIC; is that
10 correct?

11 A. That is correct.

12 Q. Do you know if the Warden's done that?

13 A. The Warden -- as far as Protocol A,
14 obtaining the drug has not -- is not a
15 possibility at this time. We've been unable
16 to locate a source. And there has been, to
17 my knowledge, no physician's order or
18 prescription for the drug because we have
19 nobody to send it to. There's no
20 availability of the drug.

21 Q. And thank you for that explanation.
22 And we're going to get into that in some
23 detail after lunch. But my question for you
24 right now -- and you would agree with me,
25 obtaining a physician's order is different

1 from actually obtaining the LIC, correct?

2 A. Correct.

3 Q. And under Protocol A, the first thing
4 the Warden is supposed to do upon the Court
5 setting an execution date, to trigger the
6 protocol, is to obtain a physician's order,
7 correct?

8 A. That's correct. As -- but now, my
9 interpretation of that would be to have an --
10 order a prescription for the drug. That
11 would need to be sent to a pharmacist or
12 somebody that could fill the order, and it's
13 my understanding and it's a fact, that we
14 don't have a source at this point to send an
15 order to. So it's, to me, having the order
16 without a source to fill the drug would be
17 useless.

18 Q. And I understand that's your
19 interpretation of the protocol.

20 A. Sure.

21 Q. As Mr. Sutherland continues to remind
22 us, this is a facial challenge, and we're
23 supposed to look at the face of the protocol.

24 A. I understand.

25 Q. Under the protocol as it's written,

1 upon the Court setting an execution date, the
2 Warden is to obtain a physician's order for
3 the LIC; is that correct?

4 A. That's correct.

5 Q. And I want to make sure that I
6 understood your answer correctly. You used
7 the phrase "prescription." Are you familiar
8 with the fact that prescription and
9 physician's orders are two different things?

10 A. I -- I am. I am.

11 Q. Okay. So is the Warden to get a
12 physician's order or a prescription?

13 A. It's my -- my interpretation of this
14 in the protocol would be a prescription for
15 the LIC.

16 Q. Okay. And have you discussed your
17 interpretation of this protocol with the
18 Warden?

19 A. I have not.

20 Q. How would -- is the Warden to know, if
21 he's not following the protocol as it's
22 written, when to obtain the prescription for
23 the LIC under Protocol A?

24 A. Once we have -- once we have a date
25 set, and as we approach that date, based on

1 the availability of the drug, the Warden or
2 his designee would work with the physician
3 and the supplier to obtain the chemical.

4 Q. So the Warden -- the Warden would have
5 direct contact with the supplier?

6 A. Not necessarily.

7 Q. Okay.

8 A. The Warden or designee. And that
9 would be somebody -- an official in the
10 Department of Corrections that would be
11 responsible for assisting the Department in
12 obtaining the drugs.

13 Q. So the Warden would -- it's either the
14 Warden who deals with the supplier or the
15 physician, or the Warden's designee?

16 A. It's -- it's the -- the -- well, let
17 me -- let me clarify this to you.

18 Q. Sure.

19 A. This -- if -- if -- let's assume that
20 we could obtain the chemicals by simply
21 contacting the physician and him writing an
22 order or a prescription for the drug, and it
23 was readily available, that the Warden could
24 make that -- set those things in motion to
25 obtain the drug.

1 The reality is, is that the chemicals
2 are not available. And my role as
3 Commissioner and my staff have worked to find
4 -- try to find sources for the drug. Now, we
5 communicate with the Warden and also with
6 individuals who would supply the chemicals,
7 and so it's a combination of -- of three or
8 four different entities working together,
9 really.

10 This protocol would be, I guess,
11 easier to understand if the drugs were
12 available, readily available. But because of
13 the situation at hand, the Warden -- or --
14 and really the designee who assists the
15 Department in finding these drugs, plays the
16 primary role in obtaining the lethal
17 injection chemicals.

18 Q. And there's a lot there to unpack this
19 afternoon, but I guess what I'm getting at
20 right now is the protocol says on its face
21 under Protocol A that upon the receipt of
22 setting of an execution date, the Warden or
23 his -- and I read "his" to modify Warden --
24 so the Warden designee shall contact a
25 physician to obtain a physician's order for

1 the LIC.

2 And you're telling me that hasn't
3 happened. And I'm asking you how would the
4 Warden know under the protocol when he should
5 obtain the LIC for the -- the physician's
6 order for the LIC?

7 A. He would know basically by
8 communicating with Central Office or -- or
9 Central Office -- I say Central Office. TDOC
10 staff, senior staff, would assist in that
11 process and notify the Warden of the fact
12 that we had the chemical.

13 Q. So somebody from downtown would call
14 the Warden and tell him, "We have the
15 chemicals, so move forward with Protocol A"?

16 A. Somebody -- the Department would
17 obtain -- it -- say, for instance, we were
18 able to obtain pentobarbital.

19 Q. Uh-huh.

20 A. The Warden would be notified that we
21 have the drugs for -- for Protocol A, and we
22 would proceed with Protocol A, yes.

23 Q. And I may have in the course of asking
24 you these questions -- and I may have gotten
25 you to use loose language there, so I don't

1 want to hold you to it.

2 When you say that "We have the
3 chemicals," would that mean you already had
4 them in your possession, or you had access to
5 them?

6 A. It would mean we have access to a
7 source that I feel confident in that could
8 supply the drugs for the process.

9 Q. Okay. Commissioner Parker, I think
10 we've established that you served a role in
11 supervising the lethal injection protocol
12 prior to becoming Commissioner, and certainly
13 during the previous litigation regarding the
14 one drug pentobarbital.

15 Were you familiar with the litigation
16 that occurred --

17 A. I was -- no, I'm not.

18 Q. Okay.

19 A. I'm not that familiar with it. In my
20 role as Assistant Commissioner, at that time
21 most of that, I am assuming, was at the
22 Commissioner's level and the other senior
23 staff of the Department.

24 Q. Were you familiar -- are you familiar
25 with how pentobarbital is compounded?

1 A. Specifically? No. I know there's raw
2 ingredients that are involved, and it's
3 compounded by a compounding pharmacy, but as
4 far as the particulars, I am not.

5 Q. Are you familiar with the fact that
6 compounded pentobarbital has a -- once it's
7 compounded has a very short shelf life?

8 A. I have been told that, yes.

9 MR. SUTHERLAND: So I'm going to
10 object because it's -- this is outside the
11 scope of -- of what the Court -- first of
12 all, pentobarbital has been upheld as
13 Constitutional, the use of it; and, secondly,
14 the only issue that you can ask him about is
15 availability, unless you want to show me.

16 MS. HENRY: The short shelf live
17 has absolutely everything to do with
18 availability. And that's where I'm going.
19 I'm not going with the Constitutionality of
20 it. You'll see with my questions.

21 MR. SUTHERLAND: Okay.

22 BY MS. HENRY:

23 Q. So, Commissioner, it is my
24 understanding that because of the short shelf
25 life -- let me back up.

1 Has there been an execution date for
2 any inmate where the Department was within 30
3 days of carrying out an execution since the
4 Department adopted a compounded pentobarbital
5 protocol?

6 A. I'm not sure.

7 Q. Are you aware of any Warden for
8 Riverbend Maximum Security Institution ever
9 receiving a physician's order for compounded
10 pentobarbital?

11 A. Yes.

12 Q. And when was that?

13 A. I don't remember the exact year, but
14 it was a few years ago. And I don't remember
15 the year. But I do know that there was a --
16 and when I say -- now, again, "order," I'm
17 referring to a, what I call a prescription --

18 Q. Right.

19 A. -- for the drug. But I don't -- I
20 don't remember the year or when that
21 occurred.

22 Q. Was that prescription filled?

23 A. I'm not sure. Again, I -- at the
24 time, I was an Assistant Commissioner, and I
25 don't know that I would have had direct

1 knowledge of that.

2 Q. So, Commissioner Parker, what we've
3 been led to believe is that the Department
4 does not obtain compounded pentobarbital
5 until such time as an execution is imminent,
6 because of its short shelf life; is that
7 fair?

8 A. That's fair.

9 Q. And let me stop there for a second.
10 The first date, the execution date for
11 Billy Ray Irick was set on January 15th of
12 2018.

13 Do you see that there?

14 A. Is it in this order? I'm assuming --

15 Q. It's the file stamp date --

16 A. Oh, okay. Yeah.

17 Q. -- January 15, 2018; is that correct?

18 A. That's correct.

19 Q. On January 15th, 2018 or prior to
20 January 15th, 2018, did you inform anyone
21 with the Tennessee Attorney General's Office
22 that the Department of Correction did not
23 have access to pentobarbital?

24 A. I'm not sure. I -- I've informed just
25 about everybody that I had communication with

1 that access to pentobarbital is almost -- I
2 can't -- we can't obtain it, and I have no
3 credible sources or availability of the drug.

4 Now, at one time -- at one time, there
5 was a -- there was a potential source where
6 the Department was told that we -- that a
7 source had the raw ingredients and was
8 willing to do the compounding, but that kind
9 of fell through at the midnight hour, to say,
10 because there was a -- it was my
11 understanding there was a -- some type of
12 agreement that the supplier sent to the
13 pharmacist that would preclude them from
14 selling the ingredients or the drug to a
15 correctional agency.

16 Q. And, again, we're going to get into
17 that in detail. But my question is: Prior
18 to January 15th, 2018, do you know if you
19 informed anyone at the Tennessee Attorney
20 General's Office that you were unable to
21 obtain pentobarbital?

22 A. I'm sure I did.

23 Q. Okay.

24 A. I'm sure I did. I -- I don't remember
25 a specific conversation, but, again, it was

1 common knowledge that I could not, although
2 we did have one potential source that fell
3 through. But it's very possible that I did.
4 I'm sure that if I was asked the question, I
5 -- I -- I would have told them that.

6 Q. What do you mean by "common
7 knowledge"?

8 A. With myself and my staff, the -- the
9 people who are responsible for assisting me
10 in trying to go to every effort to find the
11 drug. We are very aware that it's very hard,
12 that you can't find the source or the
13 ingredients or anybody willing to provide it
14 for the purpose of executions or a lethal
15 injection.

16 Q. Did that include the Governor and his
17 legal counsel?

18 A. Did what include?

19 Q. Common knowledge.

20 A. Oh, I'm not sure. You'd have to ask
21 them. I -- I -- they -- any conversations I
22 had with anyone regarding the -- if the
23 question was posed to me: "Do you have
24 pentobarbital," my response would have been:
25 "I do not have it, and I don't have a source

1 that I believe I will have it."

2 So without having a specific
3 remembrance of a particular conversation,
4 that's -- would have been my response.

5 Q. And you have stated that you are a
6 member of the cabinet?

7 A. I am.

8 Q. And you attend cabinet meetings?

9 A. I do.

10 Q. Has this topic come up at cabinet
11 meetings?

12 A. Not that I remember, no.

13 Q. On February the 16th, sir, the
14 Tennessee Attorney General's Office
15 represented certain things to the Tennessee
16 Supreme Court that appear to come from you,
17 and so I'm going to ask you about them.

18 MS. HENRY: And I'll have, first,
19 the court reporter mark this as Deposition
20 Letter L.

21 (Exhibit L was marked.)

22 BY MS. HENRY:

23 Q. I want to first direct your attention
24 to Page 2, Footnote 1, that states: "The
25 Defendant's supply of pentobarbital expired

1 while the West proceeding was pending."

2 What was -- did you provide that
3 information to the State Attorney General's
4 Office that there was expired pentobarbital?

5 A. You mean me in my special -- official
6 capacity as Commissioner?

7 Q. Yes.

8 A. I'm not aware. My staff may have, but
9 I personally did not.

10 Q. Earlier today, sir, we were discussing
11 the Tennessee Public Records Act Request.
12 And if I were to tell you that we have made
13 ongoing requests to the Department for
14 information about the department's supply of
15 pentobarbital for five years, and that those
16 logs show that the Department has never been
17 in the possession of pentobarbital, would you
18 have any reason to disagree with that?

19 A. I don't know. I would have to talk to
20 the staff to determine if -- the nature of
21 that and the correct answer. I don't -- I
22 don't know.

23 Q. And since there hasn't been an
24 execution in Tennessee since 2009, and
25 compounded pentobarbital has a short shelf

1 life once it's compounded, it would make
2 sense the Department has never actually been
3 in possession; isn't that fair to say?

4 A. I would say so, yes.

5 Q. Page 1 of Exhibit L, second paragraph
6 begins: "The State, through it's Department
7 of Correction, is required by law to carry
8 out death sentences by lethal injection, but
9 its ability to do so after June 1st, 2018 is
10 uncertain due to un-" -- "ongoing difficulty
11 in obtaining the necessary lethal injection
12 chemicals."

13 Did you provide the State Attorney
14 General with the information that supports
15 the factual basis of that sentence?

16 A. I would say, again, any conversations
17 I would have had to anyone, whether it be the
18 Attorney General or anyone else, would have
19 been: "We are having a difficult time
20 obtaining the chemicals for lethal
21 injection."

22 Q. Is that statement true today, that the
23 Department -- the ability of the Department
24 to carry out an execution is currently
25 uncertain?

1 A. Currently, I wouldn't say that it's
2 uncertain. I feel confident that we have the
3 drugs for a three-drug protocol to carry out
4 the executions in Tennessee. I do not have
5 -- I can't say the same thing about
6 Protocol A because I can't obtain the
7 chemicals or the pentobarbital.

8 Q. What is the basis of your confidence
9 that the Department currently has drugs that
10 it can use to carry out a three-drug protocol
11 after June 1st?

12 MR. SUTHERLAND: Objection,
13 irrelevant.

14 MS. HENRY: Noted.

15 THE WITNESS: Based on the fact
16 that the supply -- we -- we have a current
17 supplier that has indicated and we feel
18 confident in, that we can obtain the drug --
19 the drugs for the protocol.

20 BY MS. HENRY:

21 Q. On February 15th of 2018, was it true
22 that the Department's ability to carry out a
23 lethal injection past June 1st, 2018 was
24 uncertain?

25 A. Very possible.

1 Q. Is it possible that someone else
2 within the Department of Corrections provided
3 that information to the State Attorney
4 General's office?

5 A. It's possible.

6 Q. And is it possible that that person
7 was General Counsel Debra Inglis?

8 A. It's -- I would say it's possible,
9 yes.

10 Q. Sorry, I have a lot of exhibits. It's
11 right in front of me.

12 Commissioner, I'm going to show you a
13 document that I will have the court reporter
14 mark as Exhibit M.

15 (Exhibit M was marked.)

16 BY MS. HENRY:

17 Q. And that is an e-mail that was
18 produced by Ms. Inglis pursuant to a Public
19 Records Act Request dated October 18th, 2017.

20 MR. SUTHERLAND: Are you going to
21 make me look over here, Kelley?

22 MS. HENRY: Oh, I'm sorry
23 (tendering).

24 MR. SUTHERLAND: I have vision
25 issues.

1 BY MS. HENRY:

2 Q. In that e-mail, there's a listing of
3 drugs used for the three-drug protocol
4 midazolam, vecuronium and potassium chloride.

5 Do you see that there?

6 A. Uh-huh I do.

7 Q. And do you see where it lists that the
8 midazolam expires June 1st, 2018?

9 A. I see that, yes.

10 Q. And do you see where it says the
11 potassium chloride expires May of 2018?

12 A. I see that, yes.

13 Q. And I'm going to show you another
14 exhibit that I'll ask the court reporter to
15 mark as Exhibit N.

16 MS. HENRY: I'm sorry,
17 Mr. Sutherland. I don't have a copy for you.

18 MR. SUTHERLAND: That's okay.
19 I've seen it.

20 (Exhibit N was marked.)

21 BY MS. HENRY:

22 Q. Exhibit N is photographs -- contains
23 photographs of three sets of drugs, again
24 provided from Ms. Inglis pursuant to a
25 Tennessee Public Records Act Request. The

1 first is for midazolam, the second for
2 potassium chloride, and the third for
3 vecuronium bromide.

4 Do you see that?

5 A. I do.

6 Q. We don't see the expiration date on
7 the label for the midazolam, but the
8 potassium has an expiration date of 1 May
9 2018.

10 Do you see that?

11 A. I do.

12 Q. Were these the drugs that were in the
13 Department of Correction's possession at the
14 time the Tennessee -- the Tennessee State
15 Attorney General represented to the Tennessee
16 Supreme Court that the Department's ability
17 to carry out an execution after June 1st was
18 uncertain?

19 A. More than likely, yes, I believe so.

20 Q. Does the -- has the Department since
21 obtained a new set?

22 A. We have -- I am confident that we have
23 obtained the drugs to carry out the
24 three-drug protocol in Tennessee.

25 Q. Would the Department use expired

1 drugs?

2 A. No.

3 Q. Would the -- strike that question.

4 So you're telling us today that the
5 Department has obtained additional drugs in
6 your physical possession?

7 A. I'm saying that the Department of
8 Corrections has a source that we feel
9 confident in providing the drugs for the
10 three-drug protocol going forward.

11 Q. Okay. But they're not in your
12 physical possession?

13 A. Some are and some are not.

14 Q. Which are?

15 A. Any drug that would not have expired,
16 the expiration date.

17 Q. So that would be the vecuronium
18 bromide, with an expiration date of December
19 2018?

20 A. Correct.

21 Q. Do you have documentation available to
22 support your statement that you have a
23 supplier who's willing to -- that you are
24 confident in who would supply the other two
25 drugs necessary for a lethal injection

1 execution?

2 A. When you say do I have documentation,
3 what specifically are you asking? I -- I
4 have assurance from the individuals that work
5 and have been designated by myself to assist
6 in obtaining the drugs, that we have access
7 and in some cases procured the drugs for the
8 three-drug protocol or any -- or for
9 midazolam.

10 Q. So you have assurances from TDOC
11 employees?

12 A. And TDOC employees and suppliers.

13 Q. Does your knowledge of the assurance
14 from the suppliers rest on what you were told
15 is true by a TDOC employee?

16 MR. SUTHERLAND: I'm just going to
17 object for the record, the availability for
18 the drugs for Protocol B is not an issue.

19 MS. HENRY: Actually, it is, but
20 noted.

21 BY MS. HENRY:

22 Q. Go ahead.

23 A. Yes, it does.

24 Q. Okay. So it depends on believing the
25 person who told you this information; you

1 don't have direct personal knowledge?

2 A. Correct.

3 Q. Okay. It is now ten minutes after
4 12:00. I think it's a good time to stop for
5 lunch, if that's all right. And we will come
6 back at 1:15.

7 A. Okay.

8 (Lunch recess was observed.)

9 BY MS. HENRY:

10 Q. We are back on the record. And by my
11 clock, it is -- I have no idea. I believe
12 it's 1:16. More like 1:17.

13 MR. SUTHERLAND: Close enough.

14 BY MS. HENRY:

15 Q. Commissioner, thank you so much for
16 coming back this afternoon, not that you had
17 a choice.

18 A. I was going to ask that question.

19 MR. KISSINGER: Seriously.

20 BY MS. HENRY:

21 Q. So I want to sort of give you an
22 outline of where we're going to go this
23 afternoon. I'm not sure we're going to get
24 to cover it all, but it's just so you have a
25 sense of where we're going and to make sure

1 that you know my game plan.

2 We're going to move now to discuss the
3 December 7th, 2017 e-mail which is the
4 subject of Court-ordered discovery and then
5 we're going to move back to the question of
6 availability of drugs of the LIC for
7 executions. And then we're going to move to
8 a discussion about the implementation --
9 further discussion about implementation of
10 Protocol B as time allows and pursuant to the
11 Court's order.

12 A. Okay.

13 Q. And when I start to ask you questions
14 now as we move to the e-mail in question, I'm
15 going to refer you to an order from the Court
16 which I will have marked as Deposition
17 Letter O.

18 MS. HENRY: Letter O.

19 (Exhibit O was marked.)

20 BY MS. HENRY:

21 Q. Commissioner, Deposition Exhibit
22 Letter O is a May 7th, 2018 order from
23 Chancellor Lyle compelling certain items of
24 discovery to be produced from the Defendants
25 in this case. Have you seen this order?

1 A. Not that I recall. My staff may have
2 seen it, but I don't recall -- particularly
3 recall seeing it.

4 Q. All right. If you could, turn for me
5 to Page 12. At the top of Page 12, the Court
6 orders the Defendant -- I'll let you get
7 there, sorry.

8 A. Okay.

9 Q. It orders the Defendants Parker and
10 Mays to produce all documents related to the
11 following, and the first item is: "The date,
12 medium (electronic, telephone call, meeting,
13 et cetera) and all information you were
14 provided when you first learned of the
15 September 7th, 2017 e-mail and the actions
16 you took concerning this information."

17 Were you aware that the Court had
18 entered that order on May the 7th of 2018?

19 A. Okay. The 7th -- the September 7th
20 e-mail, let's -- is this -- do I have a copy
21 of it?

22 Q. You don't yet. Let me get you a copy
23 of that, and then we'll go back to my
24 question. Actually, it's a -- was attached
25 to the Complaint, but we're going to make it

1 a separate --

2 A. Okay.

3 Q. -- exhibit as well.

4 MS. HENRY: We'll have this as P.

5 (Exhibit P was marked.)

6 THE WITNESS: Thank you.

7 BY MS. HENRY:

8 Q. Uh-huh. And placed in front of you,

9 Commissioner Parker, is Deposition Exhibit P,

10 which contains a redacted e-mail dated

11 September 7th, 2017, 12:58 p.m. and begins

12 with: "Hello, that stuff is readily

13 available."

14 Do you see that there?

15 A. Uh-huh.

16 Q. Okay. Let me then refer you back to

17 Deposition Exhibit Letter O with respect to

18 the Court's order that you provide the date,

19 medium, and all information you were provided

20 when you first learned of the September 7th,

21 2017 e-mail. Were you aware of that Court

22 order?

23 A. Not personally, no.

24 MS. HENRY: I'll ask the court

25 reporter to mark this document Deposition

1 Letter Q.

2 (Exhibit Q was marked.)

3 BY MS. HENRY:

4 Q. Commissioner, Deposition Exhibit Q is
5 a pleading signed by your lawyers,
6 Mr. Sutherland, Ms. Davis and Mr. Mitchell,
7 entitled: Defendant Parker and Mays Answer
8 to Interrogatory 1 and Supplemental Response
9 to Request for Production of Documents
10 Pursuant to the Court's Order Dated May 7th,
11 2018.

12 Do you see that title there?

13 A. I do.

14 Q. And I am referring you now to Page 2.
15 At the top it states: "Defendants" --
16 "Defendants Parker and Mays submit the
17 following supplemental response to
18 Plaintiffs' First Request for Production of
19 Documents Pursuant to the Court's Order Dated
20 May 7th, 2018?"

21 "No. 1: All documents related to the
22 date, medium, (electronic, telephone call,
23 meeting, et cetera) and all information that
24 they were provided when they first learned of
25 the September 7th, 2017 e-mail and the

1 actions they took concerning this
2 information."

3 Do you see that there?

4 A. I do.

5 Q. And what is the response?

6 A. The response: "Defendants Parker and
7 Mays have no such documents."

8 Q. Were you consulted as to -- as far as
9 providing information to back up that
10 response?

11 A. To back up the response regarding
12 documents --

13 Q. Right.

14 A. -- that I have in my possession?

15 Q. Right.

16 A. I could have been. I'm not sure. I
17 could have been. Again, I have a lot of
18 people that talk to me.

19 Q. Right.

20 A. And in regards to this, there was
21 discussions with legal counsel regarding
22 documents that I may or may not had, and --
23 but I don't recall the specifics of this
24 particular order for them.

25 Q. And as we discussed earlier today, you

1 have many agents who you've delegated
2 authority to. Is it possible that the person
3 or persons who provided the information to
4 support this response could be one of your
5 agents, specifically General Counsel
6 Ms. Inglis?

7 A. It's possible, yes.

8 Q. I want to refer you to
9 Deposition Exhibit P, the September 7th, 2017
10 e-mail in question, and I want to ask some
11 questions about that now, if I may.

12 This e-mail was provided pursuant to a
13 Tennessee Public Records Act Request to
14 myself and Ms. Santana, and it was provided
15 by your General Counsel Ms. Inglis. It
16 appears to be a copy of an e-mail exchange
17 between someone inside the Department of
18 Correction and someone who appears to have
19 information about providing drugs for a
20 lethal injection. Would you agree with that
21 description?

22 A. I would.

23 Q. Have you seen this e-mail before?

24 A. I don't know that I've seen the actual
25 e-mail, but I'm familiar with the content.

1 Somewhat familiar with the content.

2 Q. How did you become familiar with the
3 content?

4 A. Through a discussion with my staff,
5 members of my staff and myself.

6 Q. When did that discussion first occur?

7 A. I don't remember the exact date. I
8 don't remember the exact date and time.

9 Q. Was it prior to the adoption of the
10 January 8th, 2018 protocol?

11 A. I believe so.

12 Q. Was it prior to Halloween of 2017?

13 A. I'm not sure.

14 Q. Can you place a season of the year?

15 A. No. I -- I can't. Again, there's too
16 many things. Too much time has occurred, too
17 many things have happened, so I can't tell
18 you a season of the year. I don't remember.

19 Q. Okay. So sometime after September 7th
20 but before January -- 2017 but before
21 January 8th, 2018?

22 A. Yes. Yes.

23 Q. The e-mail begins: "That stuff is
24 readily available, along with potassium
25 chloride."

1 Do you know what "that stuff" refers
2 to?
3 A. I do not. I can make an assumption,
4 but it would only be an assumption.
5 Q. You don't have personal knowledge?
6 A. No.
7 Q. The next sentence states: "I reviewed
8 several protocols from states that currently
9 use that method. Most have a three-drug
10 protocol including a paralytic and potassium
11 chloride. Here is my concern with midazolam.
12 Being a benzodiazapine, it does not elicit
13 strong analgesic effects."
14 What does that sentence, "being a
15 diazapine [sic], it does not elicit strong
16 analgesic effects" mean to you?
17 A. It means that being a benzodiazapine,
18 it does not elicit strong analgesic effects.
19 I'm assuming that is -- to me, it would mean
20 strong effects regarding a person's
21 consciousness or pain tolerance or something
22 like that.
23 Q. Ability to feel pain?
24 A. Yes.
25 Q. Okay. This next sentence reads: "The

1 subjects may be able to feel pain from the
2 administration of the second and third drugs.
3 Potassium chloride, especially."

4 What do those sentences mean to you?

5 A. The sentence would -- basically
6 describing that someone would be able to feel
7 pain with the injection of those two drugs.

8 Q. The next sentence reads: "It may not
9 be a huge concern but can open the door to
10 some scrutiny on your end."

11 What do you take that sentence to
12 mean?

13 A. That it could open up questioning
14 regarding the use of the drug.

15 Q. The next sentence reads: "Consider
16 the use of an alternative like ketamine or
17 use in conjunction with an opioid.

18 Availability of the paralytic agent is
19 spotty. Pancuronium, rocuronium and
20 vecuronium are currently unavailable."

21 And then the next word, I cannot
22 pronounce, but S-u-c-c-i-n-y-l-c-h-o-l-i-n-e.
23 Mr. Kissinger is whispering it to me, but I
24 still can't pronounce it -- "is available in
25 limited quantity. I'm currently checking

1 other sources. I'll let you know shortly."

2 So the person who wrote this e-mail at
3 least on September 7th of 2017 said that the
4 paralytic was currently unavailable but it
5 then became available; is that correct? It
6 was unavailable on September 7th, but you've
7 since obtained some?

8 A. Which sentence are you referring to?

9 Q. "Availability of the paralytic agent
10 is spotty. Pancuronium, rocuronium, and
11 vecuronium are currently unavailable"?

12 A. Correct. That's what it says.

13 Q. So the information the Department
14 received was that one of the lethal injection
15 chemicals necessary was unavailable on
16 September 7th, but it became available
17 because it came into your possession; is that
18 correct?

19 A. It appears that's the intent of the --
20 what the writer was saying, yes.

21 Q. When you -- I'm sorry.

22 A. No, that's -- go ahead. I'm sorry.

23 Q. You stated that you became aware of
24 the contents of this e-mail by having a
25 discussion between yourself and members of

1 your staff. Without providing me the names
2 of the members of your staff, does that mean
3 that you had conversations with people within
4 the Department of Corrections who were
5 advising you as to which drugs to use in a
6 lethal injection?

7 A. They were providing me information
8 regarding what this e-mail said.

9 Q. Okay. And what did they say to you?

10 MR. SUTHERLAND: Kelley, I'm going
11 to -- we're going to stop there. Page 18 of
12 the Court's May 24th Order says that "his
13 knowledge as to the efficacy of Protocol B is
14 not relevant to the Plaintiffs' facial
15 challenge." The last sentence, first --

16 MS. HENRY: I'm not asking him
17 about the efficacy. I'm asking him about
18 what the Court ordered.

19 MR. SUTHERLAND: What knowledge is
20 it that you're trying to get from him here?

21 MS. HENRY: His knowledge of the
22 e-mail and the actions that he took which is
23 specifically covered by Page 20. That's
24 exactly why we're here to have this
25 deposition. He was first ordered to provide

1 that information in an interrogatory. It was
2 not done, and then she provides that we are
3 to take his deposition and we are to discuss
4 with him the information the Deponents were
5 provided when they first learned of the
6 September 7th, 2017 e-mail and the actions
7 they took concerning that information.

8 I'm asking him what he was told.

9 BY MS. HENRY:

10 Q. Commissioner, what were you told about
11 this e-mail in that discussion?

12 A. Basically what it says here. That the
13 e-mail -- that the discussion of the
14 three-drug protocol was in the form of this
15 e-mail, and that this individual expressed
16 possible issues with the use of midazolam as
17 described in this e-mail.

18 Q. Did you dismiss this e-mail?

19 A. By "dismiss," what do you mean?

20 Q. Disregard it?

21 A. No, I didn't disregard it.

22 Q. Did you consider this e-mail important
23 information?

24 A. I did.

25 Q. What action did you take as a result

1 of this e-mail?

2 A. Well, I think the action that I took
3 had been, again, in considering the protocol
4 and considering the three-drug protocol with
5 midazolam.

6 Q. Uh-huh.

7 A. My discussions with both officials in
8 the Department, officials outside the
9 Department, professionals outside the
10 Department, as well as officials in other
11 states, discussions relative to the subject
12 matter of this paragraph regarding midazolam
13 and the experiences that other people had
14 seen regarding the use of midazolam obviously
15 was in my mind. And there was some questions
16 I wanted to answer for myself.

17 Q. I want to take that apart a little
18 bit, if I might. So as a result of learning
19 about this -- the contents of this e-mail,
20 you took it upon yourself to seek out
21 additional information from other members of
22 the Department?

23 A. Yes.

24 Q. And other Corrections officials
25 outside the state of Tennessee?

1 A. Correct.

2 Q. And expert witnesses in the area of

3 lethal injection chemicals?

4 A. Well, I'm not sure if I would call

5 them experts in the effects of lethal

6 injection chemicals or the use of lethal

7 injection chemicals, but people who I relied

8 on as reliable and people who had firsthand

9 knowledge of the use of midazolam.

10 Q. And when you say that you relied upon

11 them, what about them made them reliable?

12 A. In some cases, their profession.

13 Q. And what do you mean --

14 A. In some --

15 Q. -- by that?

16 A. Their training, their -- their

17 positions, credibility --

18 Q. So are you saying --

19 A. -- regarding -- I'm sorry, go ahead.

20 Q. When you say their credibility, are

21 you -- and, again, I'm not asking you to tell

22 me who it was.

23 A. Sure.

24 Q. Are you saying that you sought out --

25 that you consulted with individuals who have

1 experience using midazolam in their practice
2 professionally?

3 A. In some cases, that could be -- that
4 could be true.

5 Q. So there's more than one person that
6 you consulted?

7 A. True. Yes, absolutely.

8 Q. How many people?

9 A. I don't know the exact number. I
10 didn't keep a list and don't know the -- the
11 exact number of people, but it's several.

12 Q. More than a half dozen?

13 A. Several would -- yeah, I would say
14 probably close to between, I don't know, ten
15 and 20, somewhere in that neighborhood.

16 Q. Did you take notes of those
17 conversations?

18 A. No.

19 Q. Did you share the information you
20 learned from those conversations with anyone
21 else within TDOC?

22 A. Not that I'm aware of.

23 Q. You kept it to yourself?

24 A. (Witness moves head up and down.)

25 Q. You're nodding?

1 A. Pretty much so.

2 Q. You're nodding in the affirmative. So

3 you obtained this information but did not

4 share it with others?

5 A. I obtained this information in helping

6 me become, I guess, comfortable with the use

7 of the drugs that had been listed in the

8 protocol and to answer any questions that I

9 might have as Commissioner regarding what

10 drugs we used.

11 Q. What questions did you have as

12 Commissioner?

13 A. Well, obviously, I would -- I wanted

14 to -- I was -- wanted to question this

15 statement that was made to ensure that, to

16 the best of my ability, that the drugs we

17 were using, the first drug, did render an

18 offender unconscious where they couldn't feel

19 pain and that it was reliable -- it was a

20 reliable drug that had been used. And that I

21 was comfortable using it in our protocol.

22 Q. Did you speak to the author of this

23 e-mail?

24 A. No, I did not.

25 Q. Did you consider the author of this

1 e-mail reliable?

2 A. I didn't know the author of the

3 e-mail.

4 Q. Did you try to find out who the author

5 was?

6 A. I did ask someone about that and was

7 provided an answer. But to be honest with

8 you, today I could not tell you their

9 position, the author's position, of what his

10 job was or what his title was.

11 Q. If you look down at the footer on that

12 e-mail -- and I'm going to have to pull out

13 my glasses. I don't know if you have....

14 The footer uses a confidentiality

15 provision that states the document -- the

16 "document may contain information covered

17 under the Privacy Act," et cetera, et cetera,

18 basically citing the HIPAA provisions. That

19 confidentiality provision is not a

20 confidentiality provision that accompanies a

21 TDOC e-mail; is that correct?

22 A. Regarding HIPAA?

23 Q. Yes.

24 A. I don't understand --

25 Q. Yeah.

1 A. -- your question.

2 Q. In other words, this e-mail looks like
3 it came from somebody outside of TDOC. Would
4 you agree? Because it doesn't use the same
5 confidentiality language that the TDOC
6 e-mails use.

7 A. Yes, it's my understanding that that
8 e-mail did not come from somebody within
9 TDOC.

10 Q. And are you aware, sir, that the
11 exchange -- the e-mail chain to which this is
12 attached makes it appear as if this is the
13 person who provided you with the midazolam
14 that expired on June 1st, 2017?

15 A. I'm not sure.

16 Q. But you did not contact this person?

17 A. No.

18 Q. Why did you not consider this person
19 reliable?

20 A. Well, I'm not -- I don't know that I
21 had a question --

22 MR. SUTHERLAND: I'm going to
23 object because the Court has said that you
24 can ask what he -- what he did when he got
25 the information. Why is not part of what --

1 MS. HENRY: I disagree with your
2 objection, but it is noted.
3 BY MS. HENRY:
4 Q. Why did you not contact this
5 individual?
6 A. Well, I mean, first of all, he'd
7 already stated what his opinion was here --
8 Q. Uh-huh.
9 A. -- or his statement.
10 Q. Right.
11 A. I wanted to talk to people who I
12 personally knew who I felt was reliable, and
13 I did not know this individual.
14 Q. Did you do anything to ascertain
15 whether or not this individual had sufficient
16 background, training and experience with
17 midazolam, to be a reliable source?
18 A. I don't remember that I did. Again, I
19 can't remember the person's -- his exact role
20 or what his job was or who he was. I would,
21 again, make the assumption that my staff, in
22 talking to him in -- in an effort to find the
23 drug, that he would have some knowledge of
24 the drug itself that -- that's in question.
25 Q. Did you have any reason to disbelieve

1 the statements made in this e-mail?

2 A. No reason to disbelieve it, no.

3 Q. All right. But you preferred to
4 contact people who you knew personally?

5 A. I preferred to contact people who I
6 knew personally as being individuals that I
7 trusted would have firsthand knowledge of the
8 use of the drug and would be able to tell me
9 a firsthand version of how the drug
10 performed.

11 Q. And what about those individuals gave
12 you trust?

13 MR. SUTHERLAND: You -- just so
14 we're clear: We're staying away from
15 anything close to identity.

16 MS. HENRY: Right.

17 BY MS. HENRY:

18 Q. I'm not asking for identity. I'm just
19 asking, what about them gave you a sense of
20 trust?

21 A. In some cases it was their -- again,
22 their profession. In some cases, it was
23 their role in their job in a particular
24 field. In some cases, it was their position
25 in government operations and -- and....

1 Q. What would a position in government
2 operations have to do with whether or not an
3 individual had reliable knowledge about the
4 drug midazolam?

5 A. Their experience in the job and their
6 knowledge of lethal injection procedures.

7 Q. I'm going to tell you what I assume,
8 because I'm trying to stay away from getting
9 into confidentiality, but I don't want to
10 make an assumption that's wrong and I also
11 don't want to belabor this line of
12 questioning.

13 What I'm hearing you say about that
14 last category of people is that you were
15 interested in talking to individuals who had
16 information about carrying out a lethal
17 injection but not specifically about
18 experience with the use of midazolam. In
19 other words, you wanted to talk to people who
20 knew about three-drug protocol, but you
21 weren't specifically interested in their
22 experience with midazolam?

23 A. I'm not -- not only knew about a
24 three-drug protocol, but had had enough
25 knowledge about its use and had personally

1 had experience with its use in a correctional
2 setting.

3 Q. Okay. And so, again, without telling
4 me which states, it sounds like you're
5 telling me you wanted to talk to other
6 individuals who had experienced, gone
7 through, witnessed an execution that used
8 midazolam?

9 A. Correct.

10 Q. And they would be able to tell you
11 about what they witnessed with their naked
12 eye?

13 A. They would be able to tell me what
14 they witnessed, what they -- as well as other
15 information that they would have at their
16 disposal that they could share with me, yes.

17 Q. And what was that information?

18 A. That could be, again, what they
19 personally witnessed, reports or information
20 that they would have regarding the lethal
21 injection protocol.

22 Q. I heard you say "reports." Did they
23 share with you reports?

24 A. No.

25 Q. Did they provide you with an oral

1 summary of those reports?

2 A. No. I wouldn't say that, no.

3 Q. So what was the significance of the
4 reports?

5 A. Again, discussions with people who I
6 trusted as reliable to provide me answers to
7 questions related to the use of midazolam.

8 Q. Again, I'm just trying to make sure
9 I'm not misunderstanding your question [sic].
10 When you mentioned reports, are you saying
11 you found those individuals to be reliable
12 because you assumed they received reports,
13 but you didn't specifically ask about the
14 reports? Or are you saying that they told
15 you about the reports?

16 A. They shared with me their -- they
17 shared with me information that they had
18 regarding the use of the three-drug protocol
19 and both their experiences, what they
20 observed, and information that was relative
21 to them and also to me regarding the process.

22 Q. And what was that information that was
23 relevant to you?

24 A. As to whether or not midazolam in
25 these incidents basically rendered somebody

1 unconscious, and what effects, if any, they
2 may have witnessed or observed during the
3 process of an execution.

4 Q. And what did you learn that was
5 relevant to you?

6 A. I learned that midazolam was a -- in
7 my opinion, a viable option that had worked
8 in other states.

9 Q. What do you mean "had worked"?

10 A. That had, for the most part, rendered
11 people unconscious and performed as it was
12 intended to perform in a three-drug protocol.

13 Q. What do you mean: "For the most part
14 rendered someone unconscious"?

15 A. Well, that basically that when
16 administered correctly, that it rendered the
17 offender unconscious in -- in the -- in those
18 cases and -- where they could basically
19 provide a level of confidence that the
20 offender was unconscious and unable to feel
21 pain.

22 Q. What about the quality of that
23 information that you received from
24 individuals who you knew who had participated
25 in executions made that information more

1 reliable to you than the information
2 contained in the September 7th, 2017 e-mail?

3 A. Again, it was people that I knew,
4 people that -- people that had firsthand
5 knowledge and who had been directly involved
6 and who I trusted as a reliable source.

7 Q. So, again, I want to define "firsthand
8 knowledge" because I think we're talking
9 about firsthand knowledge in two different
10 ways.

11 There's firsthand knowledge that is
12 observing midazolam used in a lethal
13 injection execution, and then there's
14 firsthand knowledge of the chemical
15 properties and use of midazolam.

16 Would you agree with me those are two
17 separate things?

18 A. Absolutely.

19 Q. And sounds to me like as a result of
20 reading -- or receiving the contents of this
21 e-mail, the action you took was to consult
22 with the people in that first category, the
23 individuals who have firsthand knowledge of
24 midazolam being used in a lethal injection
25 execution; is that correct?

1 A. That's correct.

2 Q. But you did not consult with people in
3 that second category, which are individuals
4 who are familiar with the chemical
5 properties -- I think they call it
6 pharmacokinetics -- of the drug midazolam; is
7 that correct?

8 A. So who would those people in the
9 second category be? Give me an example.

10 Q. Sure.

11 So that would encompass, for example,
12 a pharmacologist or an anesthesiologist or a
13 medical doctor or a nurse practitioner or a
14 nurse anesthetist.

15 Did you contact anyone in those
16 categories?

17 A. I'm trying to remember. I spoke to
18 medical professionals about -- inquiring with
19 medical professionals also, yes. Physicians
20 basically.

21 Q. And when you say "physicians," are we
22 talking a general practitioner, a medical
23 examiner? When you say "physician," can you
24 provide me....

25 A. A regular -- yeah, not -- not a -- not

1 an anesthesiologist or a pharmacologist or
2 whatever. Medical physicians regarding --
3 with that, the use of midazolam.

4 Q. And in what context did this occur?
5 And let me give you an example. If I'm at a
6 soccer game and I'm asked what am I working
7 on right now, the topic might come up and
8 there might be somebody at the soccer game
9 who's a parent of another child, who's a
10 doctor.

11 A. Uh-huh.

12 Q. And I might engage in a conversation
13 with them about midazolam. Or there's
14 actually contacting someone in their
15 professional capacity specifically seeking
16 them out to ask this question.

17 A. Uh-huh.

18 Q. Did the conversation you have with
19 medical professionals occur in that more
20 casual atmosphere, or did it occur in a very
21 deliberate, specific, professional
22 atmosphere?

23 A. Well, I would say it was not in a --
24 it was not in a formal request for
25 information --

1 Q. Uh-huh.

2 A. -- in any -- by any means, but it was
3 my attempt --

4 Q. Uh-huh.

5 A. -- to speak with people who, in some
6 cases, had medical training, who had what I
7 would consider a professional who had
8 knowledge of the use of midazolam and its
9 effects --

10 Q. Uh-huh.

11 A. -- in the process to help me make the
12 decision regarding the three-drug protocol.

13 Q. And I don't mean to belabor this point
14 and I know you're being super careful and so
15 am I. But, again, I'm hearing this
16 information and I'm picturing myself at my
17 dentist having some work done and they're
18 giving me some Versed, and I'm saying, "Hey,
19 is this the stuff they use in the lethal
20 injection? Is it going to work?"

21 Are we talking about that kind of a
22 conversation where you're talking to a doctor
23 who you know and it just happens to come up,
24 or are we talking about "I called this person
25 because they're a physician and I wanted to

1 ask them about midazolam"?

2 A. Yeah, I mean, my specific point in
3 talking to these individuals was to get their
4 opinion or to get their -- their knowledge of
5 the use of midazolam --

6 Q. Uh-huh.

7 A. -- and its effects.

8 Q. And what about those medical
9 professionals gave you greater trust in their
10 opinions than the author in the
11 September 7th, 2017 e-mail?

12 A. Well, I think, again, I knew these
13 people and I trusted their opinion, their
14 professional opinion and their -- both in the
15 capacity of a medical professional as well as
16 individuals who were serving in an official
17 capacity, that I knew would provide adequate
18 information and reliable information.

19 Q. Uh-huh.

20 A. Not something that was read in a
21 newspaper article or -- but actual
22 information that I would use in helping me
23 make a determination.

24 Q. Did you ask those medical
25 professionals to provide you with any

1 literature or referrals to other medical
2 professionals with more relevant experience?

3 A. No, I did not.

4 Q. For how long a period of time -- you
5 said 10 to 20 conversations with a number of
6 different people. Over what period of time
7 did those conversations take place?

8 MR. SUTHERLAND: That's been asked
9 and answered. Between September and January.

10 MS. HENRY: I don't think that was
11 his answer about the period of time of the
12 conversation.

13 MR. SUTHERLAND: I think you
14 answered the question for him. Something
15 between September and January.

16 MS. HENRY: That was when he
17 learned about the e-mail, not about when he
18 had the conversations.

19 BY MS. HENRY:

20 Q. And I certainly don't want to provide
21 your answers, so let me be clear since
22 Mr. Sutherland and I have a disagreement.

23 Over what period of time did those
24 conversations occur?

25 A. I would say for a few months,

1 probably, and I don't remember specifically
2 the amount of time. It's not something I did
3 in a week, okay? So it was -- it was over a
4 period of time.

5 Q. Okay. And what did you do as the
6 Commissioner of Correction with the
7 information that you obtained from these
8 conversations?

9 A. I used it to make a decision regarding
10 my being confident in the three-drug protocol
11 that's in that --

12 Q. Uh-huh.

13 A. -- in the procedures.

14 Q. And who did you share, if anyone, the
15 information you learned from these
16 conversations with?

17 MR. SUTHERLAND: Be careful about.

18 MS. HENRY: I'm sorry. Let me --

19 BY MS. HENRY:

20 Q. Did you share -- I'll strike that,
21 Mr. Sutherland is right. I don't want to ask
22 names.

23 Did you share the information that you
24 learned from these conversations with anyone
25 at TDOC?

1 A. So, again, the information that I
2 obtained, I used in making my decision. I
3 did not go out and have discussions with
4 people about, "Well, this person told me this
5 or this person told me that." I used it to
6 make the decision.

7 And what information I would have
8 shared was that I would be confident in the
9 protocol that we have established as being a
10 -- an effective, efficient protocol based on
11 the drugs that we have available.

12 Q. What is effective and efficient to
13 you?

14 A. Effective and efficient would be a
15 protocol that would basically allow us to
16 carry out the orders of the Court for
17 execution, again, using the drugs -- the best
18 drugs that are available to render a person
19 unconscious and basically, ultimately stop
20 their breathing and their -- their heart from
21 beating and render them dead.

22 Q. Did you alone make that decision?

23 A. What decision?

24 Q. The decision that the midazolam
25 protocol would render an inmate unconscious.

1 A. I made the decision regarding the
2 three-drug protocol and the use of midazolam.
3 That was its purpose. So, yes, that was --
4 that was my decision.

5 Q. That is the purpose that's used in the
6 protocol?

7 A. I'm sorry?

8 Q. The purpose that it's used in the
9 protocol was to render the inmate
10 unconscious?

11 A. The purpose of one of the drugs that's
12 in the protocol is to render the offender
13 unconscious.

14 Q. Well, and that's not the purpose of
15 the vecuronium or the potassium?

16 A. Well, exactly.

17 Q. So that's the purpose -- that's the
18 reason that the midazolam is there?

19 A. Yes.

20 Q. Okay. And I want to again explore
21 this e-mail and the author of the e-mail
22 without getting into who he or she may be.
23 But it is of paramount importance to our case
24 why his or her information was not considered
25 reliable.

1 So I'm going to hand you a packet so
2 that we can have a clearer copy of that
3 September 7th e-mail and sort of trace its
4 journey.

5 MS. HENRY: Ask the court reporter
6 to make this our next-lettered exhibit, which
7 I believe is R.

8 (Exhibit R was marked.)

9 BY MS. HENRY:

10 Q. Mr. -- or Commissioner Parker, I've
11 placed in front of you a packet of e-mails
12 that I will represent to you was provided by
13 Debra Inglis in response to a November 2017
14 Tennessee Public Records Act Request.

15 It is a compilation of e-mails. The
16 first -- this is in the order it was provided
17 to us. So the first page is September 7th,
18 2017 at 1:39 p.m., reference --

19 MR. KISSINGER: I'm sorry, Kelley.
20 Is this Exhibit R?

21 MS. HENRY: This is Exhibit R.

22 MR. KISSINGER: Thank you.

23 BY MS. HENRY:

24 Q. Entitled "Update," although "update"
25 is misspelled. And the first line there is:

1 "Etomidate, ketamine and sodium
2 thiopental" -- and that's just for purposes
3 of our reference.

4 And if you will turn to what is the
5 fourth page -- the numbers are very tiny at
6 the bottom of the e-mail -- of that packet.
7 We see another copy of the September 7th,
8 2017 e-mail that we've been discussing.

9 Do you see that there?

10 A. I do.

11 Q. And it's a cleaner copy, obviously.

12 A. Yeah.

13 Q. And we see that the subject matter is
14 still "Update" spelled "U-P-D-T-A-E-".

15 A. Yeah.

16 Q. And that timestamp is 12:58 p.m. And
17 if you turn to the page before, Page 5 -- the
18 next page, Page 5, we see the first -- what
19 appears to be the first in that e-mail chain,
20 September 7th, 10:12 a.m. and it says: So
21 the word from the powers that be is that they
22 first want to try to find midazolam and then
23 go from there if there -- this is obviously a
24 typo -- if there none out there to get.

25 Do you see that there?

1 A. Uh-huh.

2 Q. Is that "yes"?

3 A. I do, yes.

4 Q. And there is a confidentiality notice

5 at the bottom of that e-mail. The signature

6 line is blanked out. Is that confident- --

7 do you recognize that confidentiality notice

8 to be a confidentiality notice that is used

9 within TDOC? In other words, does this

10 appear to be an e-mail from someone inside

11 TDOC, attempting to obtain drugs?

12 A. (Witness reviews documents.)

13 You know, it could be. I'll say this:

14 Different individuals have different

15 confident- -- confidentiality statements. So

16 it could be. It very well could be.

17 Q. Have you seen that e-mail before?

18 A. I have not.

19 Q. Do you know who the "powers that be"

20 are?

21 A. I do not.

22 Q. Do you think it's fair to assume that

23 you're included in the powers that be?

24 A. I could be, if this is an e-mail from

25 someone in DOC. I've been called that and

1 I've been called worse.

2 Q. Me, too.

3 A. Possibly.

4 Q. So it appears -- again, we'd have to

5 ask Ms. Inglis since she's the one that

6 produced this document -- that the e-mail

7 regarding midazolam not having strong

8 analgesic effects is the response from the

9 recipient asking to obtain midazolam.

10 And then you see at the top of the

11 Page 4 is an e-mail that says: "The places

12 that it is readily available from, do they

13 have disclaimer requirements like what" --

14 redacted -- "hit us with on the Pento"?

15 Do you see that there?

16 A. I do.

17 Q. And then do you see the response to

18 that e-mail at 1:02 p.m. on Page 3 is: "They

19 do not. It's from our primary vendor"?

20 A. I see it, yes.

21 Q. Okay. Do you think it's a fair

22 assumption, sir, then, if someone is saying

23 that the midazolam is from their prior [sic]

24 vendor, that the person who's providing the

25 information about midazolam --

1 MR. SUTHERLAND: I'm going to
2 object to having the witness assume anything
3 about e-mails he didn't write and isn't a
4 party to.

5 MS. HENRY: Thanks. The objection
6 is noted.

7 BY MS. HENRY:

8 Q. Again, we're look -- trying to
9 understand why the e-mail author of
10 September 7th, 2017 was discounted, and it
11 appears from this e-mail chain that the
12 author of the September 7th, 2017 e-mail is
13 the individual who provided the drugs for
14 executions in Tennessee, based on the fact
15 that he's talking about vendors. And that
16 would appear to be a pharmacist. So I'm
17 wondering why the pharmacist who provided the
18 midazolam is not a reliable source about
19 midazolam?

20 MR. SUTHERLAND: He's already
21 asked and answered this question. He says --

22 MS. HENRY: Your objection is
23 noted.

24 MR. SUTHERLAND: He's already
25 asked and answered.

1 MS. HENRY: Your objection is
2 noted.

3 MR. SUTHERLAND: Oh.

4 BY MS. HENRY:

5 Q. Why is a pharmacist not a reliable
6 source?

7 MR. SUTHERLAND: There's no
8 testimony he is a pharmacist.

9 MS. HENRY: We'll get there.

10 MR. SUTHERLAND: Or she is a
11 pharmacist, Kelley. You're asking an
12 improper question "Why is a pharmacist not
13 a" -- this isn't -- there isn't -- you have
14 no information this person's a pharmacist.

15 MS. HENRY: We can take that up in
16 future discovery but right now we're trying
17 to deal with these e-mails and what we're
18 limited to.

19 MR. SUTHERLAND: You're asking --

20 MS. HENRY: If the vendor -- if
21 the person who is providing drugs -- if the
22 person who is providing drugs isn't a
23 pharmacist, well, that's a whole other
24 constitutional issue now, isn't it?

25 MR. SUTHERLAND: What's your

1 question?

2 BY MS. HENRY:

3 Q. Right now my question is: Why is the
4 person who provided you the drugs, whoever
5 they are, not a reliable source of
6 information about the drugs, just because you
7 didn't know them?

8 MR. SUTHERLAND: He didn't say
9 that they weren't reliable. He said that he
10 did not consult them.

11 MS. HENRY: Your objection is
12 noted.

13 THE WITNESS: Well -- so am I to
14 answer the question?

15 BY MS. HENRY:

16 Q. You're to answer.

17 A. So, again, let me just say -- and I
18 think the point's been made. I am not -- I
19 didn't say, again, that he wasn't a reliable
20 source. But there were sources that I felt
21 like that I knew personally and people who
22 that I trusted that I personally knew and had
23 trust and confidence in.

24 So in regards to this individual, I
25 didn't know who they -- I didn't personally

1 know them. And, again, not saying that it's
2 not reliable. It was certainly something
3 that I considered relevant, very relevant,
4 because I -- again, in my discussions with
5 other officials and people, that was, again,
6 some of the subject of my questioning about
7 the use of the drug and its effect on
8 individuals in this process.

9 Q. Was there anything that prevented you
10 from learning, getting to know the person who
11 wrote this e-mail?

12 A. No. I -- if -- if -- I guess if I had
13 chosen to go and seek out this individual and
14 -- I could have that. That's fair, a fair
15 assumption.

16 Q. So the only difference between the
17 author of the e-mail and the people you
18 consulted is that you knew them and had a
19 personal relationship with them?

20 A. And my level of confidence in them in
21 my position as Commissioner and the decisions
22 that I had to make. Certainly, I would --
23 felt more comfortable in people who I
24 personally -- and when I say "personally
25 knew," people that I knew in their position

1 and felt confident that they would provide me
2 accurate information regarding the drug.

3 Q. And I guess I'm trying to figure out
4 why knowing someone personally gives you more
5 confidence in them than someone you don't
6 know personally.

7 A. I guess it's different for different
8 people.

9 Q. So this individual who is e-mailing
10 back and forth with someone in TDOC about
11 obtaining the drugs and providing the drugs
12 also -- we'll get back to him or her.

13 I'm going to move now to discussing
14 pentobarbital. I'm going to hand you, sir,
15 what I'm going to ask the court reporter to
16 mark as Deposition Exhibit S.

17 MR. KISSINGER: That's my fault
18 totally. iPhones. I hate iPhones.

19 (Exhibit S was marked.)

20 MS. HENRY: The record should
21 reflect it's now approximately 2:13. And we
22 have -- three hours and 20 minutes of the
23 deposition have elapsed.

24 BY MS. HENRY:

25 Q. Sir, I've handed you

1 Deposition Exhibit S, which is an agreement
2 titled "Agreement between Riverbend Maximum
3 Security Institution Tennessee Department of
4 Correction" and there's a redaction and the
5 word "Pharmacist."

6 Do you see that?

7 A. I do.

8 Q. If you'll flip to the third page, do
9 you see where that contract bears the
10 signature of Derrick Schofield?

11 A. I do.

12 Q. And what is the date?

13 A. September 25th, 2014.

14 Q. And does it appear that there was also
15 a signature of a pharmacist that's been
16 redacted?

17 A. Yes.

18 Q. And the pharmacist appears to have
19 dated this contract September the 21st of
20 2014?

21 A. Yes.

22 Q. If you'll flip to Page 1 of this
23 contract between the pharmacist and TDOC, do
24 you see where the contract between TDOC and
25 the pharmacist requests the pharmacist to

1 provide drugs necessary to carry out an
2 execution by lethal injection at Roman I,
3 Paragraph 1?

4 A. Yes.

5 Q. And Paragraph 2, that the pharmacist
6 will compound the drugs necessary to carry
7 out an execution in a clean, sterile
8 environment.

9 Do you see that?

10 A. What number is that, I'm sorry?

11 Q. Roman I, No. 2.

12 A. Yes, I do.

13 Q. And that under 3: "Arrange for
14 independent testing of the compounded
15 solution for potency, sterility and
16 endotoxins"?

17 A. Yes.

18 Q. Have you seen this contract before?

19 A. This particular contract, I can't
20 recall that I have, no.

21 Q. If you'll flip to Page 2, Roman III,
22 Paragraph 1: "This agreement shall be
23 effective immediately upon acceptance and
24 signing by both parties and shall remain in
25 effect until terminated by either party."

1 Do you see that?

2 A. I do.

3 Q. And Paragraph 2: "This agreement may

4 be terminated by either party by giving

5 written notice to the other party at least 30

6 days in advance. In that event, the

7 pharmacist shall be entitled to receive just

8 and equitable compensation for any

9 satisfactory authorized work completed as of

10 the termination date."

11 Do you see that?

12 A. I do.

13 Q. And so by the terms of this contract,

14 it remains in force and effect until it's

15 terminated, correct?

16 A. I'm assuming so, based on what I've

17 read.

18 Q. Has TDOC terminated this contract with

19 the pharmacist who signed it?

20 A. I would have to confer with the Legal

21 team and the people who handle contracts.

22 Q. Do you have -- have you received a

23 notice that this individual terminated his

24 contract or her contract?

25 A. Not that I recall.

1 Q. And you would agree with me that in
2 September of 2014, the lethal injection
3 chemical was compounded pentobarbital?

4 A. Yes.

5 Q. Going to hand you now, sir, a document
6 that I'm going to ask the court reporter to
7 mark as Deposition Exhibit T.

8 (Exhibit T was marked.)

9 BY MS. HENRY:

10 Q. And, sir, that is a printout of a
11 newspaper article from the Tennessean dated
12 March 3rd, 2017. And if you could look in
13 the body of the e-mail -- of the -- I'm
14 sorry, the article, the fourth full paragraph
15 that starts with "Inglis."

16 And there that paragraph reads:

17 "Inglis, who also serves as Deputy
18 Commissioner of Administration for the
19 Department told reporters Thursday after a
20 tour of Riverbend Maximum Security
21 Institution in Nashville that the
22 Department," quote, "'anticipates we could
23 carry out,'" end quote, "an execution by
24 lethal injection as needed. She said that
25 means the State could obtain the drug closer

1 to the time of the execution. However,
2 Inglis didn't elaborate on how the Department
3 would actually get those drugs."

4 Do you see that there?

5 A. I do.

6 Q. Do you believe that Ms. Inglis --
7 Ms. Inglis is also the -- strike that
8 question.

9 Ms. Inglis is also your General
10 Counsel; is that right?

11 A. Correct.

12 Q. And she made public statements about
13 the availability of pentobarbital on March
14 the 3rd, 2017; isn't that correct?

15 A. Is this when the art -- is this when
16 the statement was made, or is this when the
17 article was printed?

18 Q. Well, the article says: The Tennessee
19 prison system does not have drugs needed.
20 That's what they said. It starts: "The
21 State will be ready to administer lethal
22 injection," said Tennessee Department of
23 Correction General Counsel Debbie Inglis.

24 And then the next sentence -- I'm
25 sorry. The next paragraph, Paragraph 5:

1 "'We cannot discuss how we will procure the
2 lethal injection chemicals,'" Department
3 spokeswoman Neysa Taylor said in response to
4 follow-up questions e-mailed Thursday."

5 A. Okay.

6 Q. And I'll represent to you that
7 March the 3rd, 2017 was a Thursday.

8 A. Okay.

9 Q. Neysa Taylor is the Public Information
10 Officer --

11 A. She is.

12 Q. -- for the Department?

13 A. Yes. Neysa, N-e-y-s-a.

14 Q. So on March the 3rd, 2017, Ms. Inglis
15 publicly represented that the Department
16 could obtain pentobarbital; isn't that true?

17 A. Yes, according to this. That's --
18 that's correct.

19 And this is an article from the
20 Tennessean, right?

21 Q. Yes, sir.

22 A. A newspaper --

23 MR. SUTHERLAND: Does it say
24 "pentobarbital"?

25 THE WITNESS: It doesn't.

1 BY MS. HENRY:

2 Q. March the 3rd, 2017, did the -- was
3 the Department looking at midazolam March the
4 3rd, 2017?

5 MR. SUTHERLAND: I'm just asking:
6 Does it say "pentobarbital" on there?

7 MS. HENRY: It says -- no. It
8 says the Department can get the drug.

9 MR. SUTHERLAND: What -- can I see
10 it?

11 THE WITNESS: Yeah, I'm sorry
12 (tendering).

13 MR. SUTHERLAND: What -- where are
14 we talking about?

15 THE WITNESS: It's right here.
16 Fourth paragraph.

17 MS. HENRY: Paragraph 4.

18 BY MS. HENRY:

19 Q. Let me back up, Commissioner. You
20 adopted midazolam as an option in your
21 protocol on January 8, 2013, correct?

22 A. Correct.

23 Q. E-mails that we'll get to later will
24 show that the Department was continuing to
25 search for pentobarbital in July of 2017 and

1 that the Department did not begin looking at
2 midazolam until September of 2017.

3 A. Okay.

4 Q. As of March 2017, the only protocol
5 that was in place in Tennessee was a
6 single-drug pentobarbital protocol; is that
7 correct?

8 A. Correct.

9 Q. So is it a fair assumption, then, on
10 March 3rd, 2017, when the Department wasn't
11 looking at midazolam and only had a
12 single-drug compounded pentobarbital
13 protocol, Ms. Inglis was talking about the
14 ability to get pentobarbital?

15 A. Yes.

16 Q. And it would make sense that the
17 Department didn't have compounded
18 pentobarbital at that time because there were
19 no executions scheduled at that time --

20 A. Exactly.

21 Q. -- correct?

22 A. Yes, that's true.

23 Q. And under the protocol, you don't
24 order the compounded pentobarbital until an
25 execution date is set?

1 A. Right.

2 Q. Now I want to turn to the documents
3 that your counsel produced in response to a
4 Motion to Compel.

5 MS. HENRY: And I'm going to ask
6 the court reporter to mark this packet as
7 Deposition Exhibit U.

8 (Exhibit U was marked.)

9 BY MS. HENRY:

10 Q. As I sing the alphabet song in my
11 head.

12 Commissioner Parker, this packet of
13 materials was provided by your counsel in
14 response to an order from Chancellor Lyle to
15 provide certain documents to Plaintiffs'
16 counsel.

17 Have you seen this packet before?

18 A. I have.

19 Q. And when did you see it?

20 A. I've seen it in the last month. I've
21 seen it -- I saw it when the update was given
22 also.

23 Q. I'm sorry, what update?

24 A. When we used this to brief staff on
25 the -- the protocol.

1 Q. So Pages 1 through 17 of the
2 production appear to be a PowerPoint. And
3 you have seen the PowerPoint in previous --

4 A. Yes.

5 Q. You saw it at the time that it was
6 actually presented?

7 A. Yes.

8 Q. And that date appears to be
9 August 31st, 2017?

10 A. Correct.

11 Q. There are some additional documents
12 beginning at Bates No. 19. Had you seen
13 those documents prior to within the past
14 month?

15 A. (Witness reviews documents.)

16 I haven't seen each one specifically.
17 I -- I saw a packet that had this information
18 in it, along with this printout (indicating),
19 in my office.

20 Q. Did you gather these documents to
21 provide to counsel for production, or did
22 someone else gather these documents?

23 A. Someone else gathered these documents.

24 Q. Okay. And that someone else was a
25 TDOC employee?

1 A. Yes.

2 Q. I'd like to first focus on the
3 PowerPoint, which is titled "Lethal Injection
4 Update, August 31st, 2017."

5 Without providing any names, what was
6 the purpose of this PowerPoint?

7 A. To give officials in the Department an
8 -- updates regarding the lethal injection
9 protocols in Tennessee.

10 Q. Are you the author of this PowerPoint?

11 A. No, not totally, no.

12 Q. Was this a PowerPoint that was
13 presented to you?

14 A. It was.

15 Q. So you were the intended audience or
16 part of --

17 A. I was part of the intended audience.
18 Yes, that's fair to say.

19 Q. Was this presented by somebody -- a
20 person who has personal knowledge of the
21 contents of the PowerPoint?

22 A. Yes. Yes.

23 Q. And is that -- again, without
24 providing the name, is the person who put
25 together this PowerPoint the person who has

1 been -- who you have delegated the duty of
2 obtaining the lethal injection chemicals?

3 A. I think this PowerPoint was put
4 together by probably a couple of officials in
5 DOC, one of which would be the person who
6 assists in the process of obtaining drugs,
7 yes.

8 Q. The first page of the PowerPoint is
9 just a general explanation of why it's being
10 placed -- put together. Was this presented
11 at a meeting that was called specifically to
12 discuss lethal injection in Tennessee?

13 A. This was presented -- yes, it was.
14 That was the purpose of the meeting.

15 Q. And the PowerPoint at Page 3 provides
16 the demographics of Tennessee's death row.
17 And it -- on Page 4, it states that there are
18 no execution dates scheduled in 2017.
19 Provides two execution dates in 2018, but
20 notes that those cases have additional steps
21 in the legal process.

22 And so they were not, as we call them,
23 real execution dates; is that correct?

24 A. That's correct.

25 Q. And so the Department was not

1 concerned about providing -- gathering lethal
2 injection drugs for an execution date of
3 January 3rd, 2018 or May 9th, 2018, correct?

4 A. Correct.

5 Q. The next page, Page 5, sets forth the
6 law, the statutory law on lethal injection;
7 is that correct?

8 A. It is.

9 Q. The next page, Page 6, discusses that
10 alternative means of execution shall -- and
11 that's in bold -- be electrocution if the
12 chemicals for the LIC are unavailable and/or
13 lethal injection is found to be an
14 unconstitutional method of carrying out the
15 sentence of death.

16 Is that correct?

17 A. That's correct.

18 Q. The next page, Page 7, describes the
19 Tennessee protocol as of August 31st, 2017 as
20 being compounded pentobarbital in an
21 injectable solution, correct?

22 A. Correct.

23 Q. The next page, Page 8, is titled
24 "Search for Source;" is that correct?

25 A. Correct.

1 Q. And there, the author of the
2 PowerPoint describes that they reached out to
3 someone who they understood to have a source,
4 but that someone was unwilling to share the
5 identity of their source or provide our
6 contact information; is that correct?

7 A. That's correct.

8 Q. Page 9, again, is a summary of the
9 steps that that individual took, correct?

10 A. Correct.

11 Q. The third bullet point states:
12 "Several pharmacies declined to be involved
13 in any way. Finally a compounding pharmacy
14 agreed to compound the LIC and aid in the
15 search for a source," correct?

16 A. Correct.

17 Q. The next page, Page 10, states:
18 "There were 100 potential sources, and then
19 none of those worked for one of the following
20 reasons."

21 Those reasons are given, correct?

22 A. Correct.

23 Q. The next page, Page 11, discusses the
24 possibility of importing the chemical from
25 overseas, correct?

1 A. Correct.

2 Q. Was there discussion at the Department
3 of Correction about importing pentobarbital
4 from overseas?

5 A. There was.

6 Q. And what was the result of those
7 discussions, or what did you discuss?

8 A. Basically, that we were looking at all
9 available -- potential available options to
10 find a source for pentobarbital, to include
11 all legal means both in the U.S. and outside
12 the United States.

13 Q. And so you were looking for drugs
14 overseas. Do you know where overseas?

15 A. No, not particular. Just, again, any
16 legal method of obtaining the -- the chemical
17 necessary for the protocol, both in the
18 United States and -- as well as outside the
19 United States.

20 Q. And that next -- that bullet point
21 paragraph there sets out the CFR governing
22 the DEA's authority to issue permits for the
23 importation of Schedule II narcotics, i.e.,
24 pentobarbital, when it is necessary to
25 provide for a legitimate need of the U.S. and

1 the domestic supply is inadequate, correct?

2 A. Uh-huh, correct.

3 Q. And then we have redactions. And
4 there it describes a meeting with agents.

5 Do you know what that meeting was
6 about on Page 12?

7 A. Yes, I know what it's about.

8 Q. Can you please tell us?

9 A. I don't know that I can tell you, not
10 without identifying who the agents work for.

11 MR. SUTHERLAND: Are you asking
12 what the meeting was about?

13 BY MS. HENRY:

14 Q. I'm trying to figure it out. Early --
15 the page before talks about the DEA or the
16 DEA -- are these DEA agents?

17 MR. SUTHERLAND: We're not going
18 to talk about the identities of people.

19 MS. HENRY: This has to do with
20 availability. And if you don't want to rely
21 on that page of the discovery, I'm fine with
22 not relying on it. If you're going to rely
23 on it in your trial, I want to ask about it.

24 MR. SUTHERLAND: We can ask the
25 Court about it. But we're not going to

1 identify individuals.

2 MS. HENRY: I don't think DEA
3 agents identifies who they are. I'm not
4 asking for people inside the Department of
5 Correction. These are individuals who I
6 believe informed someone that there is a
7 supply of pentobarbital available in the
8 United States. That's what it says there.

9 BY MS. HENRY:

10 Q. Do you agree that's what it says?

11 A. You asking me?

12 Q. Yes.

13 A. Yes.

14 Q. All right. So agents from some place
15 said that there is a supply of pentobarbital
16 available in the United States?

17 A. Correct.

18 Q. And counsel objects to me asking
19 anything further on that page, so I'll move
20 on.

21 Page 13 refers to: "In the course of
22 researching the possibility of
23 importation" -- redacted -- "became aware of
24 a Federal case in Texas wherein the FDA had
25 ceased a shipment of drugs, chemicals being

1 imported by the Texas Department of
2 Corrections. Texas DOC filed suit in Federal
3 District Court for the release of the
4 shipment."

5 "There has been -- "To this date,
6 there has not been any resolution to this
7 case."

8 Have you been following the case in
9 Texas regarding the importation of
10 pentobarbital?

11 A. I have not personally. My staff has.

12 Q. And that is because if that drug
13 becomes available, you would like to obtain
14 pentobarbital through a similar source?

15 A. Again, the -- the search for
16 pentobarbital is ongoing. If we had a
17 credible source, we would follow up on it,
18 yes. So I guess to answer your question,
19 yes.

20 Q. The next paragraph states that, again,
21 redacted name "is now researching FDA
22 regulations as a result of this case to
23 determine what, if any, process can be
24 undertaken to obtain FDA approval for the
25 importation of pentobarbital. Thus far the

1 approval process appears to be very
2 cumbersome unless an exception can be claimed
3 to lessen the burden."

4 So it appears that someone in the
5 Department is researching ways to get the FDA
6 to permit the importation of pentobarbital;
7 is that correct?

8 A. Again, I think the Department is
9 looking at all available options to find
10 pentobarbital.

11 Q. So the answer to my question is yes?

12 A. When you say actively pursuing it, I
13 don't know if it's something they're looking
14 at every day, but it's something that's
15 certainly on our radar that we would
16 entertain if the possibility becomes a viable
17 option.

18 Q. Would you agree with me that
19 "cumbersome" does not mean impossible?

20 A. True.

21 Q. Just difficult?

22 A. True.

23 Q. Are you aware, sir, that yesterday the
24 Texas Department of Correction was ordered to
25 disclose their source of pentobarbital

1 publicly?

2 A. No, I'm not.

3 Q. Assuming that Texas complies with the
4 Court order from the highest Court in Texas
5 and they identify their source of
6 pentobarbital, will the Tennessee Department
7 of Correction contact that source in an
8 effort to obtain pentobarbital?

9 A. That would be a discussion I would
10 have with my staff and -- absolutely, again,
11 we will search out all options to find
12 pentobarbital, so I don't know why we
13 wouldn't. Yes.

14 Q. Okay. The next page discusses
15 Arkansas's attempt to perform seven
16 executions in the span of seven days because
17 of their difficulty in obtaining a source for
18 their LIC.

19 But in Arkansas, are you aware that
20 those seven executions involve the use of
21 midazolam?

22 A. Am I aware?

23 Q. Yes.

24 A. Yes, I am.

25 Q. So the difficulty in obtaining a

1 source for LIC is not limited to
2 pentobarbital; isn't that true?

3 A. That's correct.

4 Q. And that is because midazolam has
5 to --

6 MR. SUTHERLAND: Ms. Henry, you
7 know, I don't want to be here all night, but
8 you're just -- you've led all morning and all
9 afternoon. It's -- I mean, he can --

10 MS. HENRY: Leading isn't a valid
11 objection in a deposition or with an adverse
12 witness. But your objection is noted.

13 MR. SUTHERLAND: You seem to think
14 he's an adverse witness?

15 MS. HENRY: Yes, I do.

16 MR. SUTHERLAND: All right.

17 MS. HENRY: He's the Defendant.
18 He's a party. He's an adversary.

19 MR. KISSINGER: He's a party
20 opponent.

21 MR. MITCHELL: Absolutely.

22 MR. KISSINGER: That's the
23 definition of adverse.

24 MS. HENRY: We've got six hours,
25 and I'm moving it along.

1 BY MS. HENRY:

2 Q. With respect to midazolam -- well, let
3 me go back to pentobarbital.

4 Are you aware that the difficulty in
5 obtaining pentobarbital is because the
6 manufacturers of pentobarbital had in place
7 distribution controls on their contracts
8 whenever they sell pentobarbital to their
9 suppliers?

10 A. I am, yes.

11 Q. And are you aware that those same
12 distribution controls are in place for
13 midazolam?

14 A. I am.

15 Q. And yet some Departments of Correction
16 are able to get around those distribution
17 controls for pentobarbital?

18 MR. SUTHERLAND: Objection,
19 relevancy.

20 THE WITNESS: Yes, I do.

21 BY MS. HENRY:

22 Q. And some Departments of Correction are
23 able to get around those distribution
24 controls for midazolam?

25 A. True.

1 Q. In fact, the Tennessee Department of
2 Correction got around those distribution
3 controls for midazolam?

4 A. True.

5 Q. How was it that the Department of
6 Correction was able to get around the
7 distribution controls for midazolam but not
8 for pentobarbital?

9 A. Simply because we couldn't find a
10 source that was willing to sell us the
11 pentobarbital.

12 Q. So your source is willing to violate
13 the distribution controls for midazolam but
14 not pentobarbital?

15 MR. SUTHERLAND: We're not going
16 to talk about the sources, if they're the
17 same or different.

18 THE WITNESS: That would be a
19 question, I guess, for them.

20 BY MS. HENRY:

21 Q. Okay. Well, we'll get back to the
22 e-mails with the source who talks about
23 pentobarbital as well as midazolam.

24 A. Okay.

25 Q. Page 15 states that: "Other states"

1 -- again, it's a continuation of the
2 difficulty. It mentions the Texas case. The
3 next bullet point states: "Some states are
4 using LIC chemicals that have come under,"
5 quote, "harsh" -- I'm using quotes -- "harsh
6 scrutiny such as Alabama. Alabama's used" --
7 that's a typo. "Alabama used midazolam in
8 the recent execution of Robert Melson."

9 Did you take any action to investigate
10 the harsh scrutiny that Alabama faced after
11 using midazolam in the execution of Robert
12 Melson?

13 A. Not particularly, this particular
14 inmate. I think the -- so to answer your
15 question regarding this particular inmate,
16 no, I did not.

17 Q. What is meant by "harsh scrutiny"?

18 A. I take that to be the individuals
19 questioning the methods of execution and the
20 drugs used for execution protocols. That
21 could be generated either by articles in the
22 paper or individual witness statements or
23 things like that --

24 Q. Is the harsh --

25 A. -- so the media, primarily, I'm sorry.

1 Q. Sure.

2 Is the harsh scrutiny that's
3 referenced there on Page 15 with respect to
4 Alabama's use of midazolam in the execution
5 of Robert Melson an important consideration
6 for the Department of Correction in
7 determining which LIC to use in execution of
8 Plaintiffs?

9 A. I wouldn't say -- well, I would say
10 that -- I would say that any references or
11 accounts would be important information
12 personally to me.

13 Q. Page 16 of the production, again, from
14 your lawyers, the last paragraph states:
15 "There are circumstances where the Federal
16 Government can step in and orchestrate the
17 supply of chemicals in situations where
18 supply is so low and the cost for the
19 chemical is so high as to make it virtually
20 unavailable where there is a significant
21 need."

22 Was that information that was provided
23 to you by the author or authors of this
24 PowerPoint?

25 A. Yes.

1 Q. The last -- next page is a graphic of
2 a question mark and a cartoon figure who
3 appears to be in a thinking pose; is that
4 correct?

5 A. Correct.

6 Q. And it appears that at that point,
7 there was a discussion; is that correct?

8 A. Correct.

9 Q. What was that discussion?

10 A. A general discussion of the PowerPoint
11 as presented.

12 Q. What -- were there any conclusions
13 about the Tennessee lethal injection method
14 made as a result of the PowerPoint that you
15 received?

16 A. Not any final determinations made that
17 I remember and -- no.

18 Q. Were there any directives made by you
19 at this meeting as a result of the PowerPoint
20 and the discussion that ensued with respect
21 to the procurement of lethal injection
22 chemicals?

23 A. No.

24 Q. Were there any directives made by any
25 other members of the Department -- Tennessee

1 Department of Correction with respect to
2 procuring lethal injection chemicals as a
3 result of the PowerPoint?

4 A. No.

5 Q. At the conclusion of the PowerPoint,
6 was there a decision made to pursue midazolam
7 to the exclusion of pentobarbital?

8 A. No, not at -- not at the end of this
9 PowerPoint.

10 MR. SUTHERLAND: That's been asked
11 and answered.

12 BY MS. HENRY:

13 Q. Go -- I'm sorry, your answer was, "No,
14 not at the end of that PowerPoint"?

15 A. Right.

16 Q. And so that actually begs a question:
17 Has there been a decision to stop looking for
18 pentobarbital --

19 MR. SUTHERLAND: Asked and
20 answered.

21 BY MS. HENRY:

22 Q. -- and only to seek --

23 MS. HENRY: Actually, no, it
24 hasn't, but your objection is noted.

25 BY MS. HENRY:

1 Q. Has there been a decision to stop
2 looking for pentobarbital and only look for
3 midazolam?

4 A. No. Like I've said multiple times,
5 there's an ongoing effort to find
6 pentobarbital.

7 Q. And let's go now to Page 19 of that
8 exhibit --

9 A. Okay.

10 Q. -- which appears to be screenshots of
11 text messages. Would you agree with me
12 there?

13 A. Yes, that's what it appears to be,
14 yes.

15 Q. And those next messages appear from
16 Bates No. 19 through Bates No. 23, correct?

17 A. Page numbers, you --

18 Q. Yeah.

19 A. -- is that what you're asking? Yes.

20 Q. Yes, those page numbers at the bottom,
21 we call those Bates numbers. I don't know
22 why. I don't know what "Bates" means.

23 A. Okay.

24 Q. But we call them Bates numbers. 19
25 through 23, do you agree with me on that?

1 A. Yes.

2 Q. All right. And on Page 19 at the top,
3 there appears to be a date, Tuesday,
4 April 4th, 2017, correct?

5 A. Yes.

6 Q. Midway down the page under Wednesday,
7 April 5th, 2017, there is a text message that
8 reads: "I'm running around today so not sure
9 when I'll be open for a call. But in the
10 meantime, can you send me a list of all
11 companies, et cetera, you reached out to
12 about sourcing so I can have it for when we
13 have to show it's unavailable? Thanks."

14 Do you see that there?

15 A. I do.

16 Q. Was that list ever created?

17 A. I'm not sure. I don't -- I'm not sure
18 who -- who wrote this.

19 Q. Okay. Then at the bottom of the page,
20 it starts with the heading Thursday,
21 April 6th, 2017, nine-seven-16 a.m. [sic],
22 there's a response that states: "I'm not
23 ignoring you. I have a cold," et cetera.

24 And then we go to Page 20, and it
25 starts the text message response to the

1 person with the cold: "10-4. Sorry you're
2 sick. In my voicemail I had a question about
3 what type of pento y'all need because I'm
4 looking into a company and they needed to
5 know which kind we wanted."

6 Do you see that there?

7 A. I do.

8 Q. And then on down the page, it says in
9 response to the person who's looking into a
10 company: "We would need U.S.P. grade."

11 Do you see that?

12 A. I do.

13 Q. Page 21 has a large redaction but is
14 apparently a picture, based on the text
15 message under it, which says: "Can you tell
16 from that pic which of those would work?"

17 Page 22, there's a text message that
18 starts: "Also those are such small
19 quantities."

20 Response: "Well, they do bulk options
21 on things. So once" -- again redacted --
22 "says which one or what specific type we
23 need, I'll shoot that to them to see if it's
24 possible."

25 Do you see that?

1 A. Oh, show me where you -- in.
2 Q. Page 22 (indicating).
3 A. Okay. Okay. Yes, I see it.
4 Q. And then at the bottom there's a
5 question: "What are your thoughts on
6 acquiring it through a veterinarian?"
7 Do you see that?
8 A. Yes.
9 Q. Did TDOC consider acquiring
10 pentobarbital from a veterinarian?
11 A. It's my understanding that TDOC --
12 again, I instructed them to find -- to use
13 all available means --
14 Q. Uh-huh.
15 A. -- to find pentobarbital and obtain it
16 legally in -- inside the United States or
17 outside the United States. So very well it
18 could have, yes.
19 Q. They very well could have considered
20 getting it from a vet?
21 A. Could have.
22 Q. Yes?
23 A. Again, I'm not sure who wrote these,
24 but....
25 Q. Well, they were provided to us from

1 your lawyers in response --

2 A. Okay.

3 Q. -- to an order to produce documents
4 that were in the Department of Correction's
5 custody --

6 A. Okay.

7 Q. -- regarding the acquisition of
8 pentobarbital.

9 A. Okay.

10 Q. So I'm assuming that this is a
11 response of text messages from someone within
12 TDOC, but it's not you, correct?

13 A. Correct.

14 Q. If we look at Page 23, it states,
15 after substantial redactions: "Let me do
16 some looking into that possibility and talk
17 with the bosses," correct?

18 A. Correct.

19 Q. And that ends the text message
20 exchange.

21 And then we move to Page 24,
22 February 15th, 2017 the Subject is "Pharmacy
23 Contact" and basically everything else is
24 redacted on that page except for the word:
25 "Hi," "it's" and "THX," correct?

1 A. Right.

2 Q. So we really have no idea what that
3 page means, correct?

4 A. Correct.

5 Q. The next page starts a series of
6 e-mails dated April the 4th, 2017. And,
7 actually, those e-mails appear to be out of
8 chronological sequence. The first one at the
9 top of Page 25, April 4th, 2017, 10:41 a.m.,
10 regarding your inquiry states: "We had an
11 internal discussion and we have respectfully
12 declined to quote," correct?

13 A. Correct.

14 Q. And then a response that simply says:
15 "Thank you," correct?

16 A. Correct.

17 Q. The next page, Page 26 states: "We
18 have not made this compound in the past. I
19 will have our technical team evaluate and let
20 you know if we can develop the synthetic
21 route and GMP the manufacture process."
22 What is the synthetic route?

23 A. I do not know.

24 Q. What is the GMP manufacture process?

25 A. I am not aware.

1 Q. Does this appear to be an individual
2 who says that they are willing to attempt to
3 make pentobarbital?

4 A. I guess that could be an -- that could
5 be a reasonable assumption. It doesn't say
6 pentobarbital, but that's -- that was the --
7 what we were looking for, so I guess that's
8 an assumption that could be made, yes.

9 Q. And, again, this was provided pursuant
10 to a Court order to provide documents
11 relating to the Department's search for
12 pentobarbital?

13 A. Right.

14 Q. But you don't know who put this
15 paperwork together? We're presuming they
16 were complying with the Court order, though,
17 right?

18 A. Correct.

19 Q. At the bottom of the page at 9:41 a.m.
20 on April the 4th, 2017, it states: "Here is
21 the requested info, pentobarbital CAS
22 No. 76-74-4. Need at least 100 grams. Would
23 be interested in pricing for bulk orders."

24 Do you see that there?

25 A. I do.

1 Q. And is 100 grams an amount necessary
2 for ten executions?

3 A. Yes.

4 Q. And then when we go to Page 27, the
5 e-mail continues: "We have a compounding
6 pharmacy able to compound the solution. They
7 just need the pentobarbital. However would
8 be" interesting -- "interested in pricing the
9 compound as well through your operation. Let
10 me know if there's any other information you
11 need."

12 So on Page 27, it appears that someone
13 with TDOC is stating that TDOC, as of
14 April 4th, 2017, has a compounding pharmacy
15 willing to compound the LIC --

16 A. That's --

17 Q. -- correct?

18 A. That's correct.

19 Q. And then if you'll turn to Page 29 of
20 your lawyer's production, an e-mail dated
21 Thursday, April 6th, 2017 at 11:00 a.m. where
22 it states: "The products we sell are
23 isotopically" -- i-s-o-t-o-p-i-c-a-l-l-y --
24 "labeled and used as an internal standard for
25 analytical purposes. The concentrations

1 noted below are micrograms per milliliters.
2 We are unable to provide the quantity you
3 need. Thank you for your inquiry."
4 Do you see that?
5 A. I do.
6 Q. So the quantity that was being
7 requested was for ten executions, correct?
8 A. If this e-mail is relating back to the
9 previous one, yes. I -- I'm not -- one's
10 dated April 6th, one's dated April 4, and I'm
11 not sure -- is it from the same person and to
12 the same people? I don't know. So, I
13 mean....
14 Q. Is there a way that we can find out?
15 A. Not that I'm aware of.
16 Q. Would you agree with me that the
17 previous e-mail on the page before, which
18 requested 100 or enough for ten executions,
19 did not request a smaller amount? It only
20 requested a singular amount?
21 A. Correct.
22 Q. And in April of 2017, was the
23 Department anticipating the need to set ten
24 execution dates?
25 A. No.

1 Q. Why was the Department looking for
2 enough pentobarbital for ten execution dates?
3 A. I would have to ask the person who was
4 in contact with these pharmacies. To my
5 knowledge, the Department of Corrections
6 would be looking for pentobarbital in any
7 amount that would carry out at least one
8 execution. I mean, it doesn't -- I -- I
9 don't have any knowledge of a set limit that
10 we would only want enough pentobarbital or --
11 or an amount to do at least ten.

12 It's my understanding that our search
13 for pentobarbital -- with the exception of
14 the one case that we talked about where it
15 appeared we had someone to provide the drugs,
16 but at the last minute they backed out of
17 providing the compounded pentobarbital --
18 there has not been any cases from anyone who
19 could provide any amount of pentobarbital.

20 Q. And the source of your knowledge on
21 this, sir, is from talking to the individuals
22 who worked for you who have been engaged in a
23 search; is that correct?

24 A. From my conversations with people both
25 inside the Tennessee Department of

1 Corrections, as well as other officials from
2 multiple other states and entities, yes.

3 Q. You have not personally had a
4 conversation with any pharmacist or supplier
5 of LIC requesting whether they could provide
6 LIC; is that correct?

7 A. Well, my staff has done that.

8 Q. And so when the Court ordered your
9 lawyers to provide us with all of the
10 paperwork about all of the searches that had
11 been conducted by your staff, we're to rely
12 on those documents; is that fair to say?

13 A. That's fair to say.

14 Q. And so if the documents show the only
15 amount requested was enough for ten
16 executions and the response is: "We don't
17 have it in that amount," that's what we're
18 left with, correct?

19 A. Correct.

20 Q. And you might have told people you're
21 looking for any amount, but as far as what
22 they've actually searched for, we have to go
23 with the documents, right?

24 A. Okay. Yes.

25 Q. It is now 2:59. I think it's time for

1 us to take our afternoon break. We've been
2 at this for four hours and five minutes.

3 MS. HENRY: And we'll go off the
4 record.

5 (Brief recess observed.)

6 BY MS. HENRY:

7 Q. Okay. It's 3:15 and we're back on
8 record.

9 Commissioner, I want to continue to go
10 through the production from your lawyers.
11 The good news is I don't think we're going to
12 go six hours.

13 A. Okay.

14 Q. Skip through some of this. Beginning
15 on Page 35 of the production, there appears
16 to be handwritten notes on the person who is
17 looking for drugs. Appears -- it appears to
18 be their handwritten notes; is that correct?

19 Well, do you recognize that?

20 A. I -- it appears to be, yes, someone.
21 I -- I don't recognize this. I -- I haven't
22 seen it, but it appears to be, yes.

23 Q. It's not your handwriting?

24 A. No, it's not.

25 Q. On Page 36, again, some handwritten

1 notes. At the top of the page it says: 10
2 grams per individual -- or I-N-D period?
3 A. Uh-huh.
4 Q. And there's an arrow and the number
5 "24K," which I interpret as 24,000. Would
6 you as well?
7 A. Yes.
8 Q. So that appears to be the price being
9 quoted for pentobarbital, correct?
10 A. Yeah, it appears to be the price of
11 10 grams -- 10 grams per individual or I-N-D
12 for, I'm assuming, pentobarbital.
13 Q. And then it says: "Comp fee? 35K per
14 10G." Do you know what that means?
15 A. I do not.
16 Q. Then it says: "Source?" And then
17 there's a redaction; is that correct?
18 A. Correct.
19 Q. So we don't know if the redaction is
20 the identity of a source willing to provide
21 pentobarbital at a comp fee of 35,000 for, I
22 guess, getting it and 24,000 for the dose?
23 A. I -- I don't know.
24 Q. And then there is written "A-M-T"
25 which is a common abbreviation for "amount"?

1 A. Uh-huh.

2 Q. By, at sign, at a time.

3 Then there's a large redaction. The

4 words "time," "till" and the letters

5 "A-V-A-I-L" which is a common abbreviation

6 for "available," correct?

7 A. Correct.

8 Q. And then, again, more redactions and

9 the words "Once A-C-C-T" -- which I interpret

10 as "account" -- "approved bulk money option,"

11 correct?

12 A. Correct.

13 Q. And then there's a substantial portion

14 of the page that's redacted, correct?

15 A. Yes.

16 Q. Page 37 is all redactions, correct?

17 A. Correct.

18 Q. Page 38 is heavily redacted, correct?

19 A. Correct.

20 Q. It has at the top the letters "D-E-A"

21 and then the letter "code." Those are

22 commonly associated with individuals who have

23 a license to sell Schedule II drugs such as

24 pentobarbital, correct?

25 A. Correct.

1 Q. You have to have a DEA code?
2 A. (Witness moves head up and down.)
3 Q. Correct?
4 A. Correct.
5 Q. And then under the heavy redactions
6 are the words "they sell us the compound,"
7 correct?
8 A. Correct.
9 Q. Then there's the word "no" after a lot
10 of redactions. Then there are more
11 redactions. The word "pentobarbital" appears
12 twice on the page. The -- at the very bottom
13 of the page, there is a blank -- a redacted
14 space, an arrow and the word "supplier."
15 Do you see that there?
16 A. I do.
17 Q. And above it is the number "100" with
18 an "S" and the letters "CO." Do you know
19 what that refers to?
20 A. I do not.
21 Q. Below that is an arrow that says
22 "pentobarbitone."
23 Do you see that?
24 A. I do.
25 Q. Is pentobarbitone the same as

1 pentobarbital?

2 A. I'm not sure.

3 Q. On Page 39, again a heavily redacted

4 page. You would agree?

5 A. Yes.

6 Q. There appears to be handwritten "pharm

7 call" and, then there's redactions, and then

8 "3/1 ship" and then under -- on the next line

9 it says "Source it in"?

10 A. Correct.

11 Q. And then there are heavy redactions

12 and then it says "Not licensed to," a

13 redaction, and then "I-N-S-T," which I'm

14 assuming is "institutional" -- "agreement,"

15 correct?

16 A. Correct.

17 Q. Then there's more redactions and then

18 it says: "Compound, two weeks to and

19 confirm," correct?

20 A. Correct.

21 Q. The bottom of the page, it says:

22 "Three wholesalers," correct?

23 A. Correct.

24 Q. Page 40 is completely redacted,

25 correct?

1 A. Correct.

2 Q. Page 41 appears to be a printout of

3 the chemical properties of pentobarbitone,

4 correct?

5 A. Correct.

6 Q. And Page 42 appears to be the second

7 page of that printout, correct?

8 A. Correct.

9 Q. Do you recognize that printout?

10 A. I do not.

11 Q. On Page 43 is a document that is again

12 heavily redacted, but at the top has the word

13 -- I don't know what that word is --

14 pentasol. P-e-n-t-a-s-o-l, do you see that

15 there?

16 A. I see that. I'm not sure.

17 Q. Underneath it, it says: Sodium pento

18 powder.

19 Do you see that?

20 A. Yes.

21 Q. Do you know what that references?

22 A. I do not.

23 Q. The next word across the top of the

24 page says: "Parallel protocol," correct?

25 A. Yes.

1 Q. Do you know what that means?
2 A. I do not.
3 Q. And then it says -- there's a star and
4 it says: "Need barbiturate."
5 Do you know what that --
6 A. I see that.
7 Q. Is pentobarbital a barbiturate?
8 A. I'm not sure.
9 Q. Do you know what the star "need
10 barbiturate" means?
11 A. No, I don't.
12 Q. Page 44 is completely blacked out,
13 correct?
14 A. Correct.
15 Q. Page 45 has a redaction and the words
16 "no per pharm," correct?
17 A. Correct.
18 Q. And then a redaction.
19 Do you know what the "no per pharm"
20 means?
21 A. I do not.
22 Q. Underneath that, "Missouri lit on
23 disclose-" -- I'm assume disclosure -- "of
24 source. Court upheld confidentiality of
25 source."

1 Do you see that?

2 A. I do.

3 Q. Does that appear to be just legal

4 research?

5 A. It appears to be, yes.

6 Q. Page 46, does this appear to be more

7 legal research?

8 A. It does.

9 Q. Page 47, do you see where at the top

10 of Page 47, it says: "Plenty in Europe and

11 availability according" -- and then there's a

12 redaction and the words "has it"?

13 A. I see that.

14 Q. And then it says "no lawyers."

15 A. I see that.

16 Q. So there appears to be a notation that

17 there's plenty of pentobarbital available in

18 Europe. Is that what that notation means?

19 A. Well, based on what we've been talking

20 about, it -- it could mean that. I'm --

21 again, I would have to ask the person who

22 wrote it.

23 Q. And then there's more handwriting

24 which appears to be questions the writer is

25 either asking of somebody or asking of

1 himself or herself?

2 A. Uh-huh.

3 Q. Is that correct?

4 A. Correct.

5 Q. Commissioner Parker, we've been

6 through every single page of Deposition

7 Exhibit U, which are the only documents that

8 have been provided to us in response to the

9 Court order regarding the production of

10 documents. Are you aware of any other

11 documentation in the Department of

12 Correction's possession, custody or control

13 that would be responsive to the Court's

14 order, that are not included in this packet?

15 A. No. I would not.

16 Q. You've mentioned several times today

17 that there was a pharmacist who was willing

18 to provide pentobarbital but then backed out

19 at the last -- at the 11th hour, I believe

20 was your words; is that correct?

21 A. Correct.

22 Q. Where is the documentation of the

23 pharmacist who was willing to provide

24 pentobarbital?

25 A. It's my underst- -- what I was -- my

1 information, I was briefed on that by the
2 official who has been searching for the drug
3 for the Department. And he reported to me
4 verbally that -- kept me up-to-date that we
5 thought we had a source. There appeared to
6 be a source. The pharmacist was willing to
7 work and find, as I remember -- recall, the
8 raw ingredients to compound pentobarbital,
9 found the raw ingredients, but I was -- it
10 was my understanding they had -- the
11 pharmacist did not have them. He had to
12 purchase them from someone else. And we felt
13 like at the time that that was not going to
14 be an issue. It seemed like that that was
15 going to work out, that we would have
16 pentobarbital as a source.

17 And if I recall correctly, the day,
18 basically, that the supplier was supposed to
19 send the ingredients to the pharmacist to be
20 -- the compounding pharmacy, they sent a
21 notification to the pharmacist that these
22 chemicals or these ingredients could not be
23 used to, in my own words, compound
24 pentobarbital that would be used in a
25 correctional setting or -- or something in

1 that manner.

2 Q. And where is that notification?

3 A. He told me that verbally.

4 Q. But if there was a notification sent,

5 where is it?

6 A. I'm assuming he talked to the

7 pharmacist. I don't know. I'm assuming that

8 that would be with the people that this

9 individual talked to.

10 Q. Well, we've been through Deposition

11 Exhibit U, and there's nothing in Deposition

12 Exhibit U about a pharmacist pulling out at

13 the 11th hour. And we've agreed that this is

14 pretty important to the Department of

15 Correction and to the citizens of the state

16 of Tennessee and to the Plaintiffs?

17 A. Uh-huh.

18 Q. And so one would expect there to be

19 documentation. So I'm asking where is the

20 documentation of the pharmacist who pulled

21 out at the 11th hour or the supplier who

22 pulled out at the 11th hour?

23 A. I don't know. Again, I -- I don't

24 know that some of that information may have

25 been in the redacted information that you

1 have. I don't know. Again, I have never
2 seen a piece of paper or a documentation with
3 that language on it that "We decline" or that
4 -- or the actual notice they sent to the
5 pharmacist. I haven't seen that. I don't
6 know that it exists.

7 What I was told by my staff, that that
8 was the -- the case and what happened in that
9 situation.

10 Q. So the basis of your knowledge is a
11 verbal conversation with a member of your
12 staff about what someone else told him or
13 her?

14 A. His report back to me in regards to
15 his search for pentobarbital was a verbal
16 conversation between me and him that that is
17 the case of -- of what happened in his
18 discussion with the pharmacist.

19 Q. So it was his verbal report. Is there
20 a written report --

21 A. No.

22 Q. -- from him to you?

23 A. No.

24 Q. Why not?

25 A. Didn't need one. He --

1 Q. Why?

2 A. -- come and talked to me about it. I
3 mean, we talk daily about the search for
4 pentobarbital and the issue of finding
5 chemicals for lethal injection.

6 Q. You testified earlier today that you
7 have a poor memory. And would you agree with
8 me that one way to remember important
9 details, if you have a poor memory, is to
10 write them down?

11 A. Yeah, I guess you could say that.
12 That's true.

13 Q. But you chose not to write down the
14 content of those conversations?

15 A. Correct.

16 Q. And why is that?

17 A. Didn't see a need to.

18 Q. Have you been told not to write things
19 down about the attempts to acquire
20 pentobarbital?

21 A. No.

22 Q. Is there a person within TDOC who has
23 actual personal knowledge of the search for
24 pentobarbital?

25 A. There's individuals in TDOC who I have

1 assigned the responsibility to actively
2 search for not only pentobarbital but any of
3 the drugs necessary for the execution
4 protocol --

5 Q. Would it --

6 A. -- lethal injection protocol.

7 Q. Given that you don't have personal
8 knowledge or cannot authenticate any of the
9 documents that your counsel produced in
10 response to the Court's order, is TDOC
11 willing to make that person available for an
12 anonymous deposition?

13 MR. SUTHERLAND: Objection, Your
14 Honor [sic]. Objection. Kelley, the Court's
15 order says we're not getting into identities.

16 MS. HENRY: I didn't ask for the
17 identity. I asked him for his identity. I
18 asked if he would be willing to make him
19 available for an anonymous deposition.

20 MR. SUTHERLAND: But the West
21 decision says that we don't do that.

22 MS. HENRY: I understand. I asked
23 is the Department willing. He can say "yes"
24 or "no," and then we'll take it up with the
25 Court.

1 MR. SUTHERLAND: Sure.

2 THE WITNESS: I -- with an order
3 of the Court, I would do that.

4 BY MS. HENRY:

5 Q. Okay. Thank you.

6 I'm going to move now to a different
7 area, but before I do, I've been trying to
8 stay within the bounds of the Court's order.
9 And in so doing I may have not worded my
10 questions correctly in order to gather
11 information that you may or may not have.
12 And so forgive my catchall question, but I
13 can't form a question about information I
14 don't have. We've covered everything that's
15 been produced so far by the Department of
16 Correction, both through Public Records
17 Request and Court-ordered productions. Are
18 you aware of any other information about the
19 Department's attempts to gather
20 pentobarbital, other than what we have
21 discussed here today?

22 A. No, I'm not.

23 Q. And I do need to back up, I'm sorry.
24 I didn't -- I neglected to ask you: This
25 conversation that you had with a member of

1 TDOC staff regarding the supplier backing out
2 at the 11th hour, when did that occur?

3 MR. SUTHERLAND: Are you asking
4 when the conversation happened?

5 BY MS. HENRY:

6 Q. When did the conversation occur?

7 A. Oh, it occurred months and months ago.
8 Probably -- I don't know a long -- a pretty
9 good while ago. I would say probably a year,
10 maybe, or several months ago. And it
11 occurred -- I was made aware of it very soon
12 after he was made aware that they would not
13 be able to obtain the -- the ingredients to
14 compound the source.

15 Q. All right. And so would you agree
16 with me that if it was several months ago,
17 maybe even a year ago, fair to say that that
18 conversation between you and your TDOC staff
19 member occurred prior to the Department
20 making a determination to add the three-drug
21 protocol using midazolam?

22 A. Yes, I would think that would be a
23 safe assumption or a safe thing to say, that
24 it -- it occurred prior to the decision to go
25 to a three-drug protocol.

1 Q. When was the decision to add the
2 three-drug protocol to the Lethal Injection
3 Manual made?

4 A. I don't remember the exact -- the
5 exact date. I had discussions with TDOC
6 staff, and the -- regarding the availability
7 of pentobarbital, midazolam and -- and the
8 vecuronium and the potassium chloride for a
9 three-drug protocol, and the decision was
10 made to go -- to add the three-drug protocol
11 as Option B. But I don't remember the exact
12 date of when that decision was made. But it
13 was made, and the protocol was drafted and
14 signed by me.

15 Q. Was the -- well, the protocol was
16 adopted on January 8th, 2018.

17 A. Right.

18 Q. Can you estimate how close to
19 January 8th, 2018 the decision was made?

20 A. I would say several weeks. Maybe a
21 month or two before. I -- again, that's just
22 speculation on my part.

23 Q. So somewhere at the outset, about two
24 months?

25 A. I'd say two -- yeah, possibly.

1 Q. Okay.

2 A. It wasn't a year before.

3 Q. Okay.

4 A. But it was within that time frame.

5 Q. Okay. The protocol that has been

6 provided to us contains Protocol A and

7 Protocol B. Where within -- let me ask it

8 this way: Is there a provision in the

9 written protocol that guides the discretion

10 of the Warden as to whether to choose

11 Protocol A or Protocol B?

12 A. No, there is not.

13 Q. Who makes the decision about whether

14 to utilize Protocol A or Protocol B?

15 A. I do, the Commissioner.

16 Q. And where is that written down?

17 A. I'd have to look in -- in the

18 protocol.

19 Q. Sure. Go ahead.

20 A. (Witness reviews document.)

21 Q. And I see that your counsel has

22 helpfully guided you to a page of the

23 protocol. What page is that?

24 A. Page 34.

25 Q. All right. And what does Page 34 tell

1 us?

2 A. It's entitled "Chemicals Used in
3 Lethal Injection."

4 "The Department will use one of the
5 following protocols as determined by the
6 Commissioner. Protocol A and Protocol B."

7 Q. All right. What will guide your
8 determination?

9 A. Determination as to which protocol is
10 used?

11 Q. Correct.

12 A. Again, the availability of the drugs
13 currently. We're talking about Protocol B
14 because we have basically exhausted efforts
15 with trying to find pentobarbital. We
16 continue to search for pentobarbital, but I
17 have no reasonable expectation that we'll
18 find it, and the current process is set for
19 Protocol B to be the -- the method that's
20 used.

21 Q. So I'm going to go back to that, but
22 let me ask you this question.

23 A. Okay.

24 Q. You said that we've exhausted but we
25 continue to look. That seems contradictory

1 to me.
2 A. Well, it is contradictory, and it's
3 probably a bad choice of words. Once you get
4 to a point where you have contacted hundreds
5 of suppliers, then you get to the point of
6 repeating yourself and calling people you've
7 already contacted and looking for new sources
8 or potential new sources. But we're at that
9 point to where we're running out of options
10 as far as finding legal sources for
11 pentobarbital.

12 But I'm not as Commissioner saying we
13 stop the search for pentobarbital. It's
14 still part of the protocol. It's still an
15 option and we certainly would not want to
16 just wash our hands of that option.

17 Q. If you had in your possession lethal
18 injection chemicals for Protocol A and
19 Protocol B at the same time, how would you
20 choose between whether to use Protocol A or
21 Protocol B?

22 A. I would choose Protocol A.

23 Q. Why?

24 A. Well, it's -- one, it's a -- it's a
25 one-drug protocol. And, also, you know,

1 there's been litigation on it. I think it's
2 been -- the Courts have said that it's
3 Constitutional or whatever. But my primary
4 would be pentobarbital if it's available.
5 But it's not available.

6 Q. And you said your preference would
7 include because it's a one-drug protocol.
8 What about a one-drug protocol makes it
9 preferable?

10 A. Well, for me personally as
11 Commissioner in my official capacity, to me a
12 one-drug protocol is probably simpler.
13 You're only pushing one drug. You're not
14 pushing three. It only requires one saline
15 flush. And from my conversations, you know,
16 with individuals, I have -- just rather have
17 a -- I'd rather have the pentobarbital versus
18 the three-drug protocol.

19 Q. And what does that mean by
20 conversations with individuals "I'd rather
21 have the pentobarbital"?

22 A. Well, I've talked to -- I've talked to
23 people who have information regarding the
24 process with pentobarbital as a one-drug
25 protocol versus a three-drug protocol, and

1 it's just my personal opinion and
2 professional opinion that I'd rather have a
3 one-drug protocol.

4 Q. And not to belabor the point, sir, but
5 is that because the risk of pain and
6 suffering is less with the one-drug protocol
7 than a three-drug protocol?

8 A. Well, I don't know that I -- I don't
9 know that I'm qualified to say. I would say
10 that it makes the process less complicated as
11 far as the number of drugs, the number of
12 syringes that have to be prepared, and the
13 fact that it seems like that pentobarbital
14 would be an easier and certainly as effective
15 method as the three-drug protocol.

16 Q. Under the protocol, 30 days prior to
17 an execution date, an inmate is provided with
18 a choice. An inmate sentenced to death prior
19 to lethal injection being the default method
20 of execution in Tennessee, would be the
21 majority of our Plaintiffs. They are
22 provided with a choice between lethal
23 injection or electrocution. Does the
24 protocol provide for advising those inmates
25 which protocol will be utilized if they

1 choose lethal injection?

2 A. No, the protocol -- the protocol gives
3 an option of lethal injection or
4 electrocution. And I -- for -- those inmates
5 sentenced before January 1st of '99 have the
6 option. Those after -- of course, I mean,
7 you know that. It's -- after that, it's
8 lethal injection is the primary method.

9 Q. So is it fair to say, then, sir, that
10 it will be up to the Commissioner? You, up
11 until the time of execution, you could change
12 whether it's Protocol A or Protocol B under
13 the Lethal Injection Manual?

14 A. Well, I guess you could -- it's fair
15 to say that the option might be available,
16 but I would -- just let me clarify to say
17 that it's going to be based on the
18 availability of the drug. And, again, I have
19 no reason to believe at this point that
20 there's a source of pentobarbital that I can
21 acquire for an execution that's coming forth
22 in Tennessee. And the three-drug protocol,
23 we do have a source, and I do feel confident
24 that we'll have the drug and that that will
25 be the method that will be used going forth

1 as far as lethal injection.

2 Q. Has the Department of Correction been
3 served with a letter from the manufacturer of
4 midazolam asking that the midazolam be
5 returned?

6 A. Yes.

7 Q. And what was -- who received that
8 letter?

9 A. I'm assuming my Legal team received
10 the letter, although it could have been
11 addressed to me as Commissioner. I'm going
12 to make the assumption that that was routed
13 to the Legal team of the Department.

14 Q. What action was taken upon the receipt
15 of that letter?

16 A. We did not return the chemicals.

17 Q. And why not?

18 A. Because in my opinion we purchased
19 them legally, and we did not want to return
20 them.

21 Q. When did you receive that letter?

22 A. Months ago. I don't remember the
23 exact month, but it was months ago.

24 Q. What was the contents of the letter?

25 A. I didn't read the entire letter.

1 Again, my Legal team briefed me on what the
2 request was, and asked for a decision
3 regarding are we going to return the
4 chemicals or not.

5 Q. Having received a letter from the
6 manufacturer of the midazolam asking for the
7 return of their manufactured product, the
8 Department has made the decision to go
9 forward and purchase midazolam, knowing that
10 the manufacturer doesn't want it used?

11 MR. SUTHERLAND: Asked and
12 answered.

13 MS. HENRY: No, this is actually
14 moving forward to buy it again.

15 BY MS. HENRY:

16 Q. It's not your -- you have some -- you
17 don't have any in your possession right now
18 that's not expired, right?

19 A. Right.

20 Q. And so you've received a letter from
21 the manufacturer telling you they don't want
22 it used in the execution, and now the
23 Department is going to willfully ignore that
24 letter?

25 A. My intent is to purchase midazolam for

1 future executions in Tennessee.

2 Q. And do you believe that purchasing
3 midazolam in violation of distribution
4 agreements is legal?

5 A. That would be a question I would have
6 to ask attorneys. I'm assuming it's not
7 illegal, because it's -- I felt like if it
8 was illegal, I would not do it.

9 Q. I'm going to move now to that portion
10 of the Court's order respecting our
11 deposition regarding the --

12 MR. KISSINGER: Go ahead.

13 BY MS. HENRY:

14 Q. -- on Page 20, the Deponent's
15 knowledge, if any, of the logistics of
16 administering and implementing how Protocol B
17 is followed, administered and implemented as
18 written, okay?

19 A. Okay.

20 Q. When Protocol B is administered, it is
21 administered using a number of syringes, as
22 you've stated, correct?

23 A. Correct.

24 Q. And there are a total of nine
25 syringes; is that correct?

1 A. That's correct.

2 Q. How much time elapses between the
3 injection of the first syringe and the second
4 syringe?

5 A. I'm not sure there's a specific time,
6 so I wouldn't know.

7 Q. What is the training for how quickly
8 the syringe is supposed to be injected?

9 A. It's -- it's my understanding that
10 it's -- and I have never heard of a specific
11 time as far as minutes or seconds in regards
12 to the administering of the chemicals. It's
13 my understanding that it's a slow, steady
14 push of the -- of the chemical, observing the
15 IV site and the flow of the chemical in
16 through the catheter.

17 Q. And the observing of the IV site is
18 performed by the Executioner using the pan
19 tilt to zoom the camera in?

20 A. Yes.

21 Q. And so there's a camera that is
22 positioned over the injection site that will
23 project video into the execution -- the
24 Executioner's room?

25 A. Correct.

1 Q. And I'm going to get back to that in a
2 minute. But as the Executioner injects the
3 first syringe, which is midazolam, how much
4 time does he wait between the first push of
5 midazolam and the second push of midazolam?

6 A. As the protocol is written, there's
7 not a specific time. When he finishes one
8 syringe, he gets the other syringe, prepares
9 it to be pushed and then pushes the second
10 syringe of midazolam.

11 Q. So is it done basically one right
12 after the other?

13 A. Correct, as I understand it, yes.

14 Q. Have you personally observed the
15 Warden practice the consciousness check
16 that's in the lethal injection protocol?

17 A. I have personally witnessed him
18 perform the conscious check during a
19 training.

20 Q. Okay. One of the band practices?

21 A. Yes.

22 Q. He testified yesterday that the
23 consciousness check takes him about 10 to 12
24 seconds. Would you agree with that estimate?

25 A. I'm not sure. It would probably take

1 -- I -- I'm assuming a matter of seconds. I
2 don't think it would take three or four
3 minutes, but, yeah.

4 Q. And the consciousness check does not
5 involve pinching or twisting of the skin; is
6 that correct?

7 A. No.

8 Q. Is the -- during these training
9 sessions, these band practices, is there a
10 person fill- -- fulfilling the role of Lethal
11 Injection Recorder?

12 A. I'm not sure that in all practice
13 sessions that there are -- that there is a
14 person in place to record. I'm not sure
15 about that.

16 Q. If there are recording sheets
17 produced, would it be fair to assume that the
18 person who wrote the times in is the person
19 who is assigned to --

20 A. Yes.

21 Q. -- be the Lethal Injection Recorder?

22 A. It would be, yes.

23 Q. Okay. During the practice sessions,
24 does the Execution Team practice the lethal
25 injection Protocol B exactly as it is written

1 in the protocol?

2 A. Yes, to the best of my knowledge, yes.

3 Q. And so they actually inject -- there

4 are actually nine injections?

5 A. Correct.

6 Q. Would it be fair for us to assume,

7 then, that the times that are listed by the

8 Lethal Injection Recorder are an accurate

9 reflection of how long it takes the

10 Executioner to insert -- to push nine

11 syringes?

12 A. Yes. Again, assuming they pushed all

13 nine syringes, yes, it would be.

14 Q. And that would include the time needed

15 for the consciousness check?

16 A. Yes.

17 Q. And would that be the best evidence of

18 -- well, talking to the Executioner would be

19 the best evidence. But absent talking to the

20 Executioner, would those recordings made by

21 the Lethal Injection Recorder, of the times

22 in which the syringes are pushed, would that

23 be the best evidence of the time that elapses

24 between the pushing of the chemical?

25 A. So, yeah, absent talking to somebody

1 that's directly involved, just for an
2 example, the -- during the last full-scale
3 process that we had, knowing -- I don't know
4 that they pushed all of the -- the syringes
5 in that case because obviously you've got an
6 individual there that's a member of the team
7 that has the IVs hooked up and you're pushing
8 that much saline, so....

9 But absent anybody's personal
10 knowledge of being there and witnessing it,
11 yes, that would be the -- the most accurate
12 reflection that's available.

13 Q. And if there is a time listed next to
14 each individual syringe as though it had been
15 pushed at that particular time, can we
16 presume that there was actually a push of the
17 syringe?

18 A. I think that's a safe assumption, yes.

19 Q. The Lethal Injection Recorder wouldn't
20 just be making up times?

21 A. No, I would hope not.

22 Q. And just to close down the record on
23 this -- and I only have one full copy, but
24 Mr. Sutherland saw this yesterday.

25 MS. HENRY: I'm going to ask the

1 court reporter to mark this Deposition
2 Exhibit V.

3 BY MS. HENRY:

4 Q. And after she marks it, I'm going to
5 hand it to you to look at.

6 A. Okay.

7 (Exhibit V was marked.)

8 BY MS. HENRY:

9 Q. And is there a cover letter on
10 Deposition Exhibit V?

11 A. It is.

12 Q. And is that cover letter signed by
13 Debra Inglis?

14 A. It is.

15 Q. And who is it addressed to?

16 A. Kelley Henry.

17 Q. Okay. And --

18 A. And Janet Santana.

19 Q. And does that appear to be a cover
20 letter regarding attached -- the attachment
21 of documents pursuant to a Tennessee Public
22 Records Request?

23 A. It does.

24 Q. And what is the date of that letter?

25 A. April the 2nd, 2018.

1 Q. All right. If you could turn to what
2 is marked Page 33 of that production.

3 MS. HENRY: And, Scott, I do have
4 the relevant portions (tendering).

5 MR. SUTHERLAND: Thank you.

6 THE WITNESS: Okay.

7 BY MS. HENRY:

8 Q. And do you see there where it says at
9 the top "Protocol B Lethal Injection Chemical
10 Administration Record"?

11 A. Uh-huh, I do.

12 Q. And it has inmate name John Doe, Date,
13 2/20/18, correct?

14 A. I do, correct.

15 Q. Does that appear to be the Lethal
16 Injection Chemical Administration Record that
17 would be used in the case of a three-drug
18 execution protocol?

19 A. Yes, it does.

20 Q. And does that document have times
21 entered next to each syringe?

22 A. It does.

23 Q. And does it appear that all nine
24 syringes were pushed?

25 A. It appears so, yes.

1 Q. And does it appear that the pushing of
2 the syringes began at 1920 hours?

3 A. Correct.

4 Q. And ended at 1929?

5 A. Correct.

6 Q. And so does it also appear that three
7 minutes elapsed between the pushing of
8 Syringe 1 and Syringe 4?

9 A. Correct.

10 Q. Thank you.

11 That's all we need with that one.

12 Now, with respect to Protocol B and
13 the pushing of the lethal injection drugs, do
14 you have any knowledge of how long it takes
15 midazolam to reach its peak effect?

16 A. No, I don't.

17 Q. Do you know whether the Department of
18 Corrections has access to an EEG machine?

19 A. I do not.

20 Q. Is it likely that DeBerry Special
21 Needs facility has an EEG machine?

22 MR. SUTHERLAND: Asked and
23 answered.

24 THE WITNESS: I don't know.

25 BY MS. HENRY:

1 Q. And do you know what equipment is
2 available in the Riverbend Maximum Security
3 Institution infirmary?

4 A. I don't know what all equipment is
5 there. I know some equipment, but I do not
6 know all the equipment that's available.

7 Q. There is an infirmary at Riverbend,
8 correct?

9 A. Yes.

10 Q. And individuals can go there if
11 there's an acute health crisis?

12 A. Yes.

13 Q. And then if the crisis is something
14 that the infirmary can't take care of,
15 they'll go over to Special Needs or an
16 outside hospital, depending on the need,
17 correct?

18 A. Depending on the order of the
19 physician, yes, or the midlevel.

20 Q. If Special Needs can take care of it,
21 you prefer the inmate to go to Special
22 Needs --

23 A. Yes.

24 Q. -- for security purposes?

25 A. Yes.

1 Q. And Special Needs is a full-scale
2 hospital?
3 A. Yes.
4 Q. And does treat individuals who have
5 heart problems?
6 A. Correct.
7 Q. Why does the protocol not have an EEG
8 machine available in the execution chamber?
9 A. I don't know.
10 Q. Are you familiar with the phrase
11 "BIS"?
12 A. No, I'm not.
13 Q. Was there -- is there any provision in
14 the Tennessee lethal injection protocol that
15 permits the monitoring of an individual's --
16 of the inmate's brain activity?
17 A. No, there's not.
18 Q. Why not?
19 A. I don't know.
20 Q. If the Court ordered the Department of
21 Correction to establish a machine for
22 monitoring the brainwaves of an executed
23 inmate, would you be willing to do so?
24 A. With a -- with a final Court order
25 from an Appellate Court that ordered that,

1 yes, absolutely.

2 Q. And I guess what I'm getting at is
3 would that violate the safety or the security
4 of the institution, to have a machine there
5 monitoring brainwaves?

6 A. Not that I'm aware of.

7 Q. And is that something that would be
8 beyond the financial cost abilities of the
9 Department of Correction --

10 A. I'm not familiar with what the cost is
11 for one of those, but I would assume probably
12 not.

13 Q. Okay. I'm going to ask the same
14 question with respect to an EKG, something
15 that monitors the heart.

16 A. Same -- same answers. I -- again, if
17 it was ordered, Court-ordered, yes. And the
18 cost, I wouldn't think would be prohibited --
19 it wouldn't be cost-prohibited.

20 Q. Okay. And is the reason that it -- we
21 don't have an EEG or an EKG because it just
22 wasn't considered?

23 A. I don't know that it was considered,
24 but there never has been one. That doesn't
25 necessarily mean one thing or the other,

1 other than we have a physician there to
2 determine death, to pronounce death. But as
3 far as why there's not one or hasn't been
4 one, again, I don't know.

5 Q. According to the protocol, once IV
6 access has been obtained, isn't it true that
7 the physician waits outside the execution
8 chamber?

9 A. Correct.

10 Q. And he's not called back into the
11 execution chamber, according to the protocol,
12 until after all nine syringes have been
13 administered; is that correct?

14 A. Correct.

15 Q. The physician does not stay in the
16 room to monitor whether or not the inmate has
17 reached a plane of general anesthesia,
18 correct?

19 A. Correct.

20 Q. And he's not in the room, nor does he
21 have visual observation of the inmate to
22 determine whether the inmate has awakened,
23 correct?

24 A. Correct.

25 Q. I'm going to ask a question directly

1 from the Court's order so that I'm super
2 specific, okay?

3 A. Okay.

4 MR. SUTHERLAND: Where are we?

5 MS. HENRY: Page 20.

6 BY MS. HENRY:

7 Q. Is there a person -- and do not reveal
8 the identity -- who is designated to
9 determine whether Plaintiffs are aware and
10 experiencing unnecessary severe pain and
11 suffering from the vecuronium bromide and
12 potassium chloride during their execution?

13 A. The Warden that does the conscious
14 check prior to the vecuronium and the
15 potassium being administered.

16 Q. So is the Warden the only person who's
17 designated to fulfill this role?

18 A. Yes.

19 Q. And does he fulfill this role by
20 performing the consciousness check?

21 A. Yes.

22 Q. Does he fulfill this role in any other
23 way other than the consciousness check?

24 A. Well, he performs the consciousness
25 check, but obviously if there was -- I don't

1 want to make assumptions, but if -- if the
2 consciousness check were to pass and the
3 inmate/offender was determined to be
4 unconscious and then something happened that
5 would cause him to think that that's -- has
6 changed, something has changed, he would
7 certainly still have the option of going to
8 the other set of chemicals. But that's, you
9 know -- I hope I answered your question.

10 Q. Sure. I think you did.

11 What training does the Warden receive
12 for determining whether something has gone
13 wrong that would cause him to switch to the
14 other set of chemicals?

15 A. Just the training that he receives
16 there as his -- in his role as Warden to
17 check for a response from the offender during
18 the consciousness check, the three checks
19 that he does.

20 Q. So it's really just the consciousness
21 check?

22 A. Correct.

23 Q. And if the consciousness check doesn't
24 actually confirm that the inmate is insensate
25 to pain, then the Warden doesn't have any

1 other check to fall back on; is that correct?

2 A. Let me make sure I understand your
3 question. If the Warden determines that the
4 inmate is not -- is still conscious or not
5 insensate -- what was -- how did you
6 pronounce that?

7 Q. Insensate.

8 A. Insensate to pain, the option he has
9 is to move to the secondary set of chemicals
10 and start the process over.

11 Q. Is it your understanding that once an
12 inmate passes the consciousness check with
13 the Warden, that the inmate cannot reawaken?

14 A. It's my understanding that once he
15 passes the consciousness check, that we
16 proceed with the second chemicals, and that
17 the process continues on. I -- I don't know
18 if I've answered your question.

19 Q. And the second set of chemicals is the
20 vecuronium, the paralytic, correct?

21 A. Correct.

22 Q. Which paralyzes the inmate?

23 A. Correct.

24 Q. And so if the vecuronium causes the
25 inmate to wake up from the sedation, there

1 would be no way for the Warden to observe
2 that fact, correct?
3 A. I --
4 Q. According to the protocol?
5 A. That's probably -- well, you know,
6 again, if the inmate's laying there and he --
7 his eyes pops [sic] open and it's obvious
8 that he's -- he's become conscious, that
9 would be a clear sign.
10 I -- but, again, I feel kind of --
11 it's a medical question that probably a
12 medical professional probably should answer.
13 But from my laymen's terms, I mean,
14 there's -- there's indications that if the
15 offender was to become conscious again after
16 passing a consciousness check, that the
17 Warden would know that and could move onto
18 the secondary set of chemicals.
19 Q. There's a lot in there. And I agree
20 with you that a medical professional is
21 required, but there's no medical professional
22 in that room.
23 A. That's correct.
24 Q. So the person who is responsible is
25 the Warden, correct?

1 A. Correct.

2 Q. And he has no medical training,
3 correct?

4 A. Correct.

5 Q. And the vecuronium paralyzes the
6 muscles, correct?

7 A. Correct.

8 Q. So the Warden, without medical
9 training and without a monitor, would be
10 unable to recognize that the inmate has
11 reawakened, correct?

12 A. Correct.

13 Q. Are there any contingency plans other
14 than pushing the second set of chemicals in
15 the event the Plaintiffs are aware and
16 experiencing unnecessary and severe pain from
17 the vecuronium bromide and the potassium
18 chloride during their executions?

19 A. No, not in the protocol.

20 Q. Are there any other contingency plans
21 that aren't in the protocol?

22 A. Other than -- not that I'm aware of,
23 no.

24 Q. And I believe you've testified that if
25 the inmate was not unconscious, "unconscious"

1 being your word, not the Plaintiffs' word.
2 You understand we --
3 A. I understand.
4 Q. -- think there's a difference between
5 unconsciousness and insensate?
6 A. Okay.
7 Q. But using the protocol's terms of
8 "unconscious" and if it's determined that
9 they are not unconscious after the second
10 administration of midazolam, then you've
11 testified you would call off the execution at
12 that point?
13 A. Yeah. The Warden -- yes, the Warden
14 would contact me, and I would delay the
15 execution, call off the execution.
16 Q. What if you had additional drugs
17 available to you in the armory, would you
18 continue the execution later that night?
19 A. No.
20 Q. Are there drugs available to the
21 physician who's waiting in the sally port
22 area to ameliorate the effects of the drugs
23 that have been given to the inmate from the
24 -- in the administration of the first and
25 second drugs of midazolam, should the

1 midazolam not work?

2 A. No.

3 Q. Are you aware of the harmful and toxic

4 effects of midazolam itself when given in a

5 bolus dosage -- can cause to an inmate?

6 A. No.

7 Q. Have you asked anyone about the impact

8 on the human body of giving a bolus dose of

9 midazolam?

10 A. No.

11 And what do you mean by "bolus dose,"

12 I'm sorry.

13 Q. The massive quantity of midazolam

14 that's being injected.

15 A. I see.

16 Q. That's -- they refer to that as a

17 bolus dose.

18 A. Okay.

19 Q. That's a large amount.

20 A. Okay.

21 Q. Have you asked anybody about what

22 effect that's going to have on the human

23 body, separate and apart from the other two

24 drugs?

25 A. Other than the effect of it renders

1 the individual unconscious. That's basically
2 it.

3 Q. So you haven't discussed with anyone
4 the toxicity of midazolam itself and the pain
5 that it can cause to an inmate?

6 A. No.

7 Q. Has the Execution Team been trained to
8 recognize the signs of a paradoxical effect?

9 A. What's a paradoxical effect?

10 Q. So a paradoxical effect with midazolam
11 is a known phenomenon where instead of
12 rendering an inmate sedated, which is what
13 midazolam is used for, sedation, instead, it
14 renders them agitated and hyperalert and
15 aware.

16 That you didn't know what a
17 paradoxical effect is suggests to me that
18 you've never heard that phrase before today?

19 A. I may have heard it, but I don't know
20 that I remembered the exact definition of it
21 or your definition of it.

22 To answer your question, again, the
23 Warden for the -- to do the conscious check,
24 I would assume and think that it's a
25 reasonable -- or assumption that if he does a

1 conscious check and the inmate is
2 hyper-exaggerated or agitated that he would
3 know that and say that the inmate is not
4 conscious.

5 Q. Or that he --

6 A. Or that he is conscious.

7 Q. Right.

8 A. I'm sorry, yes.

9 Q. What safeguards, if any, are in place
10 to deal with a paradoxical effect?

11 A. Nothing other than the fact that the
12 -- the offender is secured. He is secured to
13 the gurney and -- but there's none that I'm
14 aware of.

15 Q. I want to turn now to asking you some
16 questions about Counts 4 and 5 of our
17 Complaint that have survived the Motion to
18 Dismiss, okay?

19 A. Okay.

20 Q. We have made allegations respecting
21 access of attorneys to the Courts during an
22 execution, should an emergency arise. And so
23 as the Commissioner of Correction, I just
24 want to ask you some questions related
25 basically to activities that attorneys are or

1 are not allowed to engage in.

2 It is my understanding that the
3 protocol allows for one Defense Counsel
4 witness; is that correct?

5 A. I believe that's correct.

6 Q. Why is the inmate limited to one
7 Defense Counsel witness?

8 A. Well, the number of people that's in
9 the area, I -- there's -- it's -- it's
10 crowded. And -- and I know that we have to
11 limit the number of individuals in that area.
12 That's basically it.

13 Q. And the Defense Counsel witness is
14 required to observe in the official witness
15 room; is that correct?

16 A. Yeah, the -- the counsel -- legal
17 counsel for the offender and I believe the
18 Attorney General is in the execution chamber
19 for a period of time until right before -- if
20 I'm remembering correctly -- after the IVs
21 have been inserted, they are -- they leave
22 the execution chamber and go to the witness
23 area to observe the execution.

24 Q. So the Defense Counsel witness is
25 permitted to be present during the insertion

1 of the IVs; is that correct?

2 A. I believe that's correct.

3 Q. And when they are present during the

4 insertion of the IVs, they are able to

5 observe those members of the Execution Team

6 who are inserting the IV, correct?

7 A. Yes.

8 Q. And you feel enough confidence in

9 Defense Counsel witnesses that you can trust

10 them to not identify those members of the

11 Execution Team who have inserted the IVs,

12 correct?

13 A. I would hope so.

14 Q. There have been six executions in

15 Tennessee, correct?

16 A. I believe that's correct. I --

17 Q. Are you --

18 A. -- I don't know exactly how many.

19 Q. Do you know of any Defense Counsel

20 witness who has observed an execution who has

21 later revealed the identities of the

22 Execution Team members that he or she has

23 observed?

24 A. Not that I'm aware of.

25 Q. I actually should say "he." There's

1 never been a she.

2 After the Defense Counsel witness and
3 the Attorney General witness exit the room,
4 they go to the official witness room,
5 correct?

6 A. Correct.

7 Q. Along with the media, correct?

8 A. Correct.

9 Q. And I'm going to show you, just for
10 convenience purposes, out of my notebook
11 Page 10 of the January 8, 2018 lethal
12 injection protocol. Does that appear to be a
13 diagram of the -- well, what's that a diagram
14 of?

15 A. Yeah, it appears to be the death watch
16 area and the death chamber, along with the
17 garage and other areas in that building.

18 Q. So surrounding the execution chamber,
19 there appear to be a number of rooms where
20 there are windows into the execution chamber;
21 is that correct?

22 And could you identify what those
23 rooms are?

24 A. Yes. Here (indicating).

25 Q. And what is that, when you say "here,"

1 what is that?

2 A. That's the official witness room as
3 identified in this diagram. And then the
4 victim's family room here (indicating) in
5 this location with a window directly in front
6 of the gurney.

7 Q. Adjacent to the official witness room,
8 there appears to be an unidentified room; is
9 that correct?

10 A. That's correct.

11 Q. What is that room?

12 A. That's an electrical room.

13 Q. Okay. So there's electrical equipment
14 in there?

15 A. There is.

16 Q. Is there a window from that room into
17 the execution chamber?

18 A. No, there's not.

19 Q. Okay. Within the official witness
20 room, is there a telephone?

21 A. I don't think so. And, again, it
22 could be, but I don't think so.

23 Q. Okay.

24 A. Sorry. That's your pen.

25 Q. No, no worries.

1 If a problem were to develop -- if a
2 Defense Counsel witness were to observe what
3 he or she believed to be a violation of his
4 or her client's Constitutional rights, once
5 they are in the official witness room, what
6 recourse do they have to contact the Court to
7 advise the Court of what they believe to be a
8 Constitutional violation?

9 A. I don't know of any immediate method
10 that they would have, other than the
11 individuals in that room, the Attorney
12 General -- or the people from their office.
13 I don't know of any direct line that would be
14 available for a call --

15 Q. Would --

16 A. -- unless there was -- again, unless
17 there was a phone in there with a line. And
18 I don't know. I'd have to check on that.

19 Q. Would it violate the safety and
20 security of the institution to place a
21 landline in the official witness room that
22 would allow Defense Counsel to contact the
23 Court?

24 A. I wouldn't think so. I think the
25 Department would be willing to work with, you

1 know, anyone to try to make sure people have
2 access to their -- or you would have -- or
3 the attorneys would have access or whoever.
4 But I don't know that there's not a phone
5 there. I would need to check that.

6 Q. So I will tell you that the Warden
7 testified yesterday that there's a phone
8 there, but he doesn't know if there's an
9 outside line.

10 A. Okay.

11 Q. But the Warden's testimony was that he
12 wouldn't permit Defense Counsel to call
13 outside the institution. But as
14 Commissioner, you could override that
15 decision, correct?

16 A. Yes.

17 Q. If Defense Counsel needed to leave the
18 execution chamber in order to contact the
19 Court, would they be permitted to leave the
20 -- the official witness room?

21 A. Yes.

22 Q. How far -- how long would it take the
23 lawyer to exit the official witness room and
24 reach the administration building at
25 Riverbend Maximum Security Institution?

1 A. Approximately, I would say, maybe two
2 minutes, a minute, two minutes.

3 Q. Would they need to have an escort?

4 A. Yes.

5 Q. And would they need to wait for that
6 escort to arrive to take them?

7 A. Yes.

8 Q. So though it's --

9 A. Well, assuming there was -- there
10 would not be an escort there available
11 somewhere onsite.

12 Q. And there's no provision in the
13 protocol for that to happen?

14 A. There is not provision, no.

15 I would say that I'm assuming that
16 you're saying you would have to go up front
17 to use the phone. If there's a phone there
18 that has access to a switchboard at the
19 facility, a call could be placed. Just
20 because it's not a dedicated outside line --
21 they're available.

22 Q. Right.

23 A. And, again, I -- personally I wouldn't
24 be opposed to working to try to make sure
25 that the attorneys had access to make a call

1 if they needed to make a call.

2 Q. And would that include installing a
3 telephone with those capabilities if one is
4 not there currently?

5 A. Uh-huh, it -- it could include that or
6 other options.

7 Q. Would another option include allowing
8 the attorneys to bring a cell phone with them
9 to the official witness room?

10 A. I don't know that I would want someone
11 bringing a cell phone in. It's possible that
12 -- it's possible that the Department could
13 provide a phone that would be available to be
14 used.

15 Q. So the Department -- if I'm hearing
16 you right, maybe the Department could provide
17 an approved cell phone as opposed to a
18 personal cell phone?

19 A. Yeah, I -- I would certainly not be
20 opposed in any way to providing the attorneys
21 access to communications that they would need
22 to do their job.

23 Q. Thank you.

24 It is 4:20, and we've been going five
25 hours and 11 minutes. We're going to go off

1 the record and I'm going to consult with my
2 cocounsel and then we're going to wrap up,
3 okay?

4 A. Okay.

5 (Brief recess observed.)

6 BY MS. HENRY:

7 Q. Okay. It's 4:34, and we're back on
8 the record. Let me start my timer again.

9 Really, just a few follow-up,
10 clarifying questions.

11 Commissioner, would it be possible for
12 the Department to make provisions for two
13 Defense Counsel witnesses to be present
14 during an execution so that if something goes
15 wrong, one person could contact the Court
16 while the other person could remain
17 observing?

18 A. I think that's something we could
19 consider.

20 Q. Okay. Thank you.

21 Earlier I asked -- you mentioned the
22 Executioner watching the injection site, the
23 IV injection site, through the pan, zoom,
24 tilt camera. Do you know whether or not it
25 would be possible to run a separate video

1 line into the official witness room so that
2 the attorneys could observe the IV injection
3 site during an execution?

4 A. That's, as you've said -- is currently
5 not available. And at this point, I'm not
6 sure I could do that or that I would do that.

7 Q. Okay. And is -- for what reason?

8 A. Well, I would just say there's more
9 people in that area than just the counsel for
10 the -- for the offender and the Attorney
11 General. And it's something that I would
12 have to consider and talk to my Legal team
13 about. And I would question whether or not
14 it's -- it's really necessary. But, again,
15 it's something that I -- I don't think I
16 would be prepared right now to give you a
17 final answer on that.

18 Q. I just want to make sure I'm
19 understanding the answer is that your
20 concerns aren't so much about safety and
21 security of the institution, but more about
22 emotional harm that could --

23 A. Well, I would have --

24 Q. -- come from observing that?

25 A. -- different concerns. I see that --

1 there's a multitude of issues that I would
2 have to consider as the Commissioner in
3 conjunction with consultation with my
4 attorneys, and -- and with the people of the
5 Department as well as the people at the
6 facility --

7 Q. Okay.

8 A. -- before I could give you a definite
9 answer on that.

10 Q. Okay. Would it be possible to -- not
11 whether it would be advisable or not. Is it
12 physically possible within the institution to
13 connect such wiring and install a monitor?

14 A. I'm assuming that it is physically
15 possible, although I would have to confirm
16 that with our maintenance and technical folks
17 at the facility. But I'm -- I'm sure
18 almost -- in today's age, almost anything is
19 possible.

20 Q. Would it be possible to mount a camera
21 in the Executioner's room in such a way that
22 -- and not whether you would approve it, but
23 if it's possible -- to mount a camera in such
24 a way that Defense Counsel would be able to
25 observe the Executioner push the syringes

1 without showing the face of the Executioner?

2 A. I'm not sure that that's possible.

3 Q. And why not?

4 A. I mean, there's movement in that room.

5 Depending on the position of the Executioner,

6 depending on what happened in the room that

7 would cause him to move or to bend down or to

8 shift, I -- again, I -- it's something that,

9 you know, if you're asking me is it possible,

10 it's -- I'm sure that it's possible. I don't

11 know that it's something that I would want to

12 do without being forced to do.

13 Q. Okay. We have been at this since 9:30

14 this morning. It is 4:40, and five hours and

15 15 minutes into questioning, so I know it's

16 kind of hard to say think back over the whole

17 day and if there is something you'd like to

18 change, but since we aren't -- we may not

19 have another opportunity to get together and

20 discuss these issues, is there an answer that

21 you gave today that you would like to go back

22 and modify, add to, or change?

23 A. Not that I'm aware, no. Not that I

24 recall.

25 Q. I know from our deposition of Mr. Mays

1 yesterday that the Attorney General's Office
2 does not wish to waive signature, so we will
3 provide you with a copy and ask you to review
4 your deposition and make any -- you can't
5 change what you said, but if there are
6 typographical errors, you can definitely
7 change them.

8 A. Sure.

9 Q. And in that deposition, there'll be a
10 list of the things that you agreed to go back
11 and talk to General Counsel -- and we'll just
12 ask -- I'm not going to try and repeat those
13 right now, because I might get it wrong.

14 A. Okay.

15 Q. So we'll just ask you to review those
16 materials that you would be on the record to
17 look for and to provide those through
18 Mr. Sutherland.

19 At this point, Plaintiffs don't have
20 any further questions. We might have some
21 follow-ups to anything Mr. Sutherland or Mr.
22 -- Ms. Davis wish to ask.

23 MS. HENRY: Any questions?

24 MR. SUTHERLAND: I don't have any
25 questions.

1 BY MS. HENRY:

2 Q. Thank you very much for your time. It
3 was a pleasure meeting you. We will take our
4 one certified question to the Court, and if
5 there is a need to have further discussions,
6 Mr. Sutherland will be in contact with you to
7 schedule that.

8 Thank you.

9 A. Thank you.

10 MS. HENRY: We're off the record
11 at 4:41.

12 FURTHER DEPONENT SAITH NOT.

13 (Proceedings concluded at
14 4:41 p.m.)

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1 REPORTER'S CERTIFICATE

2 I certify that the witness in the
3 foregoing deposition, TONY PARKER, was by me
4 duly sworn to testify in the within entitled
5 cause; that the said deposition was taken at
6 the time and place therein named; that the
7 testimony of said witness was reported by me,
8 a Shorthand Reporter and Notary Public of the
9 State of Tennessee authorized to administer
10 oaths and affirmations, and said testimony,
11 Pages 8 through 280 was thereafter
12 transcribed into typewriting.

13 I further certify that I am not of
14 counsel or attorney for either or any of the
15 parties to said deposition, nor in any way
16 interested in the outcome of the cause named
17 in said deposition.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 8th day of June 2018.

20

21

22

23

24

25



Carissa L. Boone, LCR No. 382
My License Expires: 6/30/2018

1 E R R A T A

2

3 I, TONY PARKER, having read the
4 foregoing deposition, Pages 8 through 280,
5 taken June 5, 2018 do hereby certify said
6 testimony is a true and accurate transcript,
7 with the following changes (if any):

8

9 PAGE LINE SHOULD HAVE BEEN REASON

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Tony Parker

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Notary Public

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My Commission Expires: _____

	11:00	80:7	17	191:1	252:13
<u>1</u>		216:21			
			18	117:24	20 74:18
1 64:16	11:01	80:16		150:11	107:18
81:5 87:2	11th	117:18	18th	116:25	114:22
91:16		228:19		117:14	150:23
130:24		230:13,21,		134:19	154:15
132:5		22 235:2	19	191:12	169:5
136:8					181:22
143:8,21	12	141:5		209:7,16,	210:24
182:22		197:6		24 210:2	245:14
183:3,22		247:23	19-year-old		258:5
191:1	12:00	139:4		16:4	2007 42:6
253:8	12:15	16:15	1920	253:2	2009 131:24
10 169:5	12:30	16:15	1929	253:4	2013 22:10,
195:17	12:58	142:11	1:02	176:18	14 188:21
221:1,11		174:16	1:15	139:6	2014
247:23	12th	76:4	1:16	139:12	182:13,20
269:11					185:2
10-4 211:1	13	112:18	1:17	139:12	2017 19:5
10-7-503		198:21	1:39	173:18	49:16
47:21	14	34:22	1st	132:9	134:19
100 195:18		113:3		133:11,23	140:3
215:22	15	112:23		135:8	141:15
216:1		127:17		136:17	142:11,21
217:18		204:25		157:14	143:25
223:17		206:3		242:5	145:9
10:12 174:20		278:15			146:12,20
10:39 74:17	15th				149:3
10:41 214:9		127:11,19,			151:6
10G 221:14		20 128:18	2	47:24	157:14
11 195:23		133:21		130:24	164:2
274:25		213:22		143:14	168:11
112 62:3	16	206:13		183:5,11,	173:13,18
	16th	130:13		21 184:3	174:8
			2/20/18		177:10,12
					185:12

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: 2018..4:20

186:14	141:18	26	214:17	220:25
187:7,14	143:11,20	27	216:4,12	37 222:16
188:2,4,25	146:10,21	29	216:19	38 222:18
189:2,4,10	193:19	2:13	181:21	39 224:3
191:9	194:3	2:59	219:25	3:15 220:7
192:4	236:16,19	2nd	251:25	3rd 46:25
193:18	251:25			48:15
194:19	269:11			185:12
210:4,7,21	20th 56:6,9			186:14
213:22	59:14		3	187:7,14
214:6,9	97:14	3	47:5	188:2,4
215:20	100:3,11		62:24	189:10
216:14,21	21 107:10		84:12	194:3
217:22	211:13		176:18	
2018 19:2	21st 182:19		183:13	
46:25 47:5	22 211:17		193:15	4
49:7,10,14	212:2	3/1	224:8	4 176:11
56:7,10	22,000 34:5	30	126:2	188:17
59:19	22- 34:5		184:5	193:17
62:1,21	23 209:16,		241:16	217:10
63:5,11,13	25 213:14	31st	191:9	253:8
64:1 74:16	23,000 34:6		192:4	266:16
92:3 97:14	24 213:21		194:19	40 111:17
100:3,12,	24,000	33	85:23	224:24
20 102:19	221:5,22		252:2	41 225:2
116:25	24K 221:5	34	237:24,	42 225:6
117:6,14,	24th 74:13,		25	43 225:11
18,24	16 150:12	35	24:22	44 226:12
118:4	25 107:24		114:23	45 226:15
127:12,17,	108:1	35,000	220:15	46 227:6
19,20	214:9		221:21	47 227:9,10
128:18	25th 182:13	35K	221:13	4:20 274:24
132:9		36	114:23	
133:21,23				
135:8,11				
136:9				
137:19				
140:22				

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: 4:34..acceptable

4:34	275:7		8th	19:1	abbreviation
		<hr/>			
4:40	278:14	7		59:19 62:1	221:25
		<hr/>		63:13 64:1	222:5
4:41		7		92:3	
280:11,14		70		100:20	Abdur'rahman
		113:2		146:10,21	8:14 9:17
4th	49:7,	73		236:16,19	abilities
10,15		84:25			256:8
210:4		85:3		<hr/>	
214:6,9		76-74-4		9	ability
215:20		215:22		<hr/>	14:14
216:14			9	195:8	75:17
		78,000	90	18:25	106:4
		34:8	95	96:1	111:3
<hr/>	5	7:10		96:1	114:15
		84:11	99	242:5	132:9,23
5	49:14	7th		9:10	133:22
174:17,18		19:5	9:30	278:13	136:16
186:25		140:3,22			147:23
194:5		141:15,18,	9:41	215:19	155:16
266:16		19 142:11,			189:14
		20 143:10,	9th	95:11,	
500	83:23	20,25		25 102:19	absent
84:15		145:9		117:6	249:19,25
		146:19		194:3	250:9
5th	210:7	149:3,6,16			
		151:6		<hr/>	
		164:2		A	absolutely
<hr/>	6	168:11		<hr/>	15:10,24
		173:3,17	A-c-c-t		17:10,20
6	84:13	174:7,20		222:9	102:17
88:10 92:2		177:10,12	A-m-t	221:24	125:17
194:9					154:7
6,400-plus			A-v-a-i-l		164:18
34:1		<hr/>		222:5	201:10
		8			202:21
6th	62:21	8	a.m.	74:17	256:1
63:5,11		91:18,21,		174:20	
118:4		25 188:21		210:21	Abu-ali
210:21		194:23		214:9	8:14
216:21		269:11		215:19	9:17
217:10		810		216:21	acceptable
		8:18			82:17

acceptance	acquisition	26:21	32:11
183:23	213:7	27:12	168:17
		266:25	
access	Act 44:18		Adjacent
42:16,21	47:4,12,22	activity	270:7
43:17,21	48:16	27:3	
52:1	51:12	255:16	administer
104:20	52:5,9		81:18,19
109:18	97:11	Acts 45:22	186:21
124:4,6	100:4	actual 32:12	administered
127:23	131:11	99:19	84:16
128:1	134:19	145:24	163:16
138:6	135:25	168:21	245:17,20,
253:18	145:13	231:4	21 257:13
257:6	156:17	232:23	258:15
266:21	173:14	acute 254:11	administering
272:2,3		Adams 35:13,	245:16
273:18,25	acting	14	246:12
274:21	113:22		
	114:10,15	add 235:20	administration
accompanies	action 18:20	236:1,10	21:11
156:20	151:25	278:22	67:22 69:3
	152:2		87:3 90:14
account	164:21	addition	108:9
222:10	205:9	70:13	110:23
Accountability	243:14	additional	148:2
115:2		68:6 137:5	185:18
	actions	152:21	252:10,16
accounts	141:15	191:11	263:10,24
206:11	144:1	193:20	272:24
accurate	150:22	263:16	
19:7 181:2	151:6		administrative
249:8		address 58:5	106:22
250:11	active 77:4		
	85:17	addressed	Administrator
acquire		46:24 49:7	22:19,22
232:19	actively	114:16	
242:21	200:12	243:11	Admit 53:10
	233:1	251:15	admitted
acquiring			53:13
212:6,9	activities	adequate	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: adopted..analgesic

adopted	agent 148:18	agreement	alphabet
92:15	149:9	128:12	190:10
126:4	agents	182:1,2	alter 109:24
188:20	145:1,5	183:22	alternative
236:16	197:4,10,	184:3	104:17
adoption	16 198:3,	224:14	107:14
146:9	14	agreements	148:16
advance	agitated	245:4	194:10
184:6	265:14	ahead 9:7	alternatives
adversary	266:2	13:18 14:7	86:18
202:18	agree 48:11	52:12 80:2	ambiguity
adverse	50:13,21	104:23	88:25
202:11,14,	53:5	138:22	ambiguous
23	63:20,25	149:22	81:22 89:3
advisable	84:3 86:20	153:19	ameliorate
277:11	88:14,24	237:19	263:22
advise 271:7	94:6,20	245:12	Amended 53:5
advising	110:15	aid 195:14	56:5 62:9,
150:5	118:24	Alabama	10
241:24	145:20	205:6,7,10	amendments
affirm 49:13	157:4	Alabama's	59:20
affirmative	164:16	205:6	America
155:2	185:1	206:4	73:13
afternoon	198:10	all-inclusive	amount 170:2
16:17	200:18	65:11	216:1
122:19	209:11,25	allegations	217:19,20
139:16,23	217:16	55:16	218:7,11,
202:9	224:4	266:20	19 219:15,
220:1	232:7	allowed	17,21
AG'S 10:14	235:15	13:17	221:25
age 277:18	247:24	107:11	264:19
agency 75:1	261:19	267:1	Amy 10:1
128:15	agreed 9:10	allowing	analgesic
	195:14	80:20	147:13,16,
	230:13	274:7	
	279:10		

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: analytical..arise

18 176:8	169:21	224:6	23:4,16
analytical	256:16	225:2,6	24:22 34:5
216:25	anticipate	227:5,16,	97:4
and/or 59:18	74:1	24 252:25	181:21
194:12	anticipates	269:15	273:1
anesthesia	185:22	270:8	April 46:25
257:17	anticipating	Appellate	47:5 48:15
anesthesiologi	217:23	255:25	62:21,22
st 165:12	anybody's	applicable	63:5,11
166:1	250:9	86:21	74:13
anesthetist	API 77:4	applies 85:6	210:4,7,21
165:14	apparently	88:2	214:6,9
Ann 10:17	211:14	apply 87:17	215:20
Annotated	appeared	88:3,7	216:14,21
47:21	218:15	appoint	217:10,22
annual	229:5	113:22	251:25
38:10,23	appears	114:5,9,15	Arabia
39:16,21,	62:11	appointed	25:18,19
22 41:4,9	87:23	44:6	arbitrarily
51:10	145:16,18	approach	82:15
annually	149:19	120:25	area 87:14
37:17,18	174:19	approval	153:2
anonymous	176:4	199:24	234:7
233:12,19	177:11	200:1	263:22
answering	182:18	approve	267:9,11,
53:16 57:5	191:8	277:22	23 269:16
58:15	200:1,4	approved	276:9
answers	207:3,6	222:10	areas 52:1
15:16	209:10,13	274:17	68:2 69:15
16:1,6	210:3	approximate	106:23
42:4 53:9	216:12	21:21	111:14
54:13,17	220:15,17,	approximately	269:17
58:10	20,22	20:12	arise 16:24
162:6	221:8,10	21:20	68:8 89:11
	223:11		266:22

Arkansas	138:5	25 113:3,	248:1
201:19		14 114:3	249:12
	assistance		273:9,15
Arkansas's	33:19	assume 23:25	277:14
201:15	104:16	72:7 74:9	
	105:7	96:8	assumption
armory	110:14	121:19	147:3,4
263:17		160:7	158:21
	assistant	175:22	160:10
Arrange	9:20,22,24	177:2	176:22
183:13	10:1	226:23	180:15
arranged	20:15,17,	248:17	189:9
17:1	22 22:1,	249:6	215:5,8
arrive 273:6	11,13,16	256:11	235:23
	24:8,9	265:24	243:12
arrow 221:4	26:8,18		250:18
223:14,21	28:13,21	assumed	265:25
art 186:15	29:10	162:12	
	30:3,19		assumptions
article	31:16,19,	assuming	259:1
168:21	25 32:21	18:18 24:6	
185:11,14	36:10,15	33:7 41:21	assurance
186:17,18	43:8	42:22 45:1	138:4,13
187:19	103:22	48:23	
	113:20	50:10	assurances
articles	124:20	51:13	138:10
41:8	126:24	72:21 91:6	assure 67:5
205:21		93:16	
	assisting	99:21	atmosphere
ascertain	9:21,23	124:21	166:20,22
158:14	57:7 58:8	127:14	
asks 45:2	121:11	147:19	attached
	129:9	184:16	62:15
assembles		201:3	141:24
37:19	assists 36:3	213:10	157:12
	122:14	221:12	251:20
assigned	193:6	224:14	
233:1		230:6,7	attachment
248:19	Associate	243:9	61:18,20
	23:21 24:6	245:6	62:8,15
assist 68:15	25:4 93:7,		251:20
104:12,25			
123:10			attempt

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: attempted..Bachelor

65:12	130:14	168:10	257:22
167:3	131:3	172:21	aware 29:5
201:15	132:13,18	177:9,12	31:3,4
215:2	134:3	180:17	32:19 37:9
attempted	136:15	192:10	42:3 43:2
75:4	267:18	195:1	77:22 90:1
attempting	269:3	206:23	91:10
175:11	271:11	author's	97:15
attempts	276:10	156:9	101:19,21
28:19	279:1	authority	126:7
29:23	attorney/	113:21	129:11
232:19	client	145:2	131:8
234:19	57:14,16,	196:22	141:17
attend 26:19	20,22	authorized	142:21
36:19,20	attorneys	184:9	149:23
70:20,23	245:6	authors	154:22
73:3 96:23	266:21,25	206:23	157:10
115:25	272:3	availability	198:23
130:8	273:25	29:22	200:23
attended	274:8,20	86:11,14	201:19,22
31:15,16,	276:2	96:14	203:4,11
25 71:2,7,	277:4	118:20	214:25
15 72:3,4	audience	121:1	217:15
97:2	192:15,17	125:15,18	228:10
103:21,22	August	128:3	234:18
114:8	95:11,25	138:17	235:11,12
attention	102:19	140:6	256:6
47:23	117:6	148:18	258:9
67:11	191:9	149:9	262:15,22
84:10	192:4	186:13	264:3
130:23	194:19	197:20	265:15
Attorney	authenticate	227:11	266:14
10:10 54:4	233:8	236:6	268:24
127:21	author	238:12	278:23
128:19	155:22,25	242:18	
	156:2,4	awakened	<hr/> B <hr/>
			Bachelor

25:2	218:16	26:17,20	253:2
back 16:16	228:18	27:2,7	begin 88:17
19:16	background	32:11	189:1
22:15 26:7	20:8 24:24	33:17 55:4	beginning
50:5 56:1	43:25	65:2 69:1	191:12
58:21 76:8	158:16	78:4,16,24	220:14
80:16 84:6	backing	102:14	begins 87:2
86:12	235:1	123:7	89:21
88:10	bad 57:3	148:5	132:6
89:17	239:3	151:12	142:11
91:16	band 98:21,	156:18	146:23
92:25	23,25 99:6	162:25	begs 73:3
100:24	100:2	163:15,18	208:16
107:2,9,21	247:20	165:20	behalf 8:13
111:23	248:9	171:15,19	97:12
125:25	barbiturate	196:8	belabor
139:6,10,	226:4,7,10	213:23	160:11
16 140:5	based 25:15	229:18	167:13
141:23	46:3	238:14	241:4
142:16	74:12,17	247:11	believed
144:9,11	75:7	265:1	271:3
181:10,12	86:10,13	266:25	believes
188:19	105:13	267:12	13:21
203:3	120:25	basis 68:14	believing
204:21	133:15	106:13	138:24
217:8	171:10	132:15	bend 278:7
220:7	177:14	133:8	benzodiazapine
231:14	184:16	231:10	147:12,17
234:23	211:14	Bates 191:12	big 18:6
238:21	227:19	209:16,21,	Billy 95:11
247:1	242:17	22,24	116:25
257:10	basic 55:15	bear 92:5	127:11
260:1	basically	bears 182:9	BIS 255:11
275:7	13:9 21:14	beating	
278:16,21	25:13	171:21	
279:10	backed	began 100:22	

bit 35:22	bounds 234:8	Broadway 35:19
152:18	Bradley 9:16	8:18 130:6,8,10
blacked	brain 255:16	broke 81:4 cabinet-level
226:12	brainwaves	35:7
blank 223:13	255:22	bromide
blanked	256:5	77:11 California
175:6	branch 35:5	136:3 26:4
blocks 17:24	break 16:13,	call 105:5
blood 17:16	14,17	123:13
blue 83:25	17:18,21	126:17
87:2	80:8,12,	141:12
Board 34:15	20,23	143:22
body 185:13	220:1	153:4
264:8,23	breaking	165:5
bold 194:11	16:15	193:22
bolus 264:5,	breaks 11:9	209:21,24
8,11,17	17:18	210:9
bono 10:7,8	breathing	224:7
boss 10:21	171:20	263:11,15
bosses	briefed	271:14
213:17	229:1	272:12
bottom	244:1	273:19,25
107:17	briefe	274:1
117:7	76:11	bullet
174:6	briefly 9:2	195:11 called 113:9
175:5	bring 274:8	167:24
209:20	bringing	175:25
210:19	274:11	176:1
212:4	broad 57:25	193:11
215:19	108:14	257:10
223:12	broadly	calling
224:21	54:16	239:6
		calls 96:6
		camera
		246:19,21
		275:24
		277:20,23
		cabinet

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: capabilities..charged

capabilities	89:24	234:12	chain	157:11
274:3	94:16			174:19
	114:20	categories		177:11
capacity	126:3	165:16		
131:6	160:16	categorize	challenge	
166:15	194:14	54:16	29:2 96:8	
168:15,17			119:22	
240:11	cartoon	category	150:15	
Capital 8:15	207:2	160:14		
		164:22	chamber	
care 17:9	CAS 215:21	165:3,9	89:18,20	
110:12	case 8:13		109:13	
254:14,20	15:17	catheter	255:8	
	70:21 76:5	246:16	257:8,11	
career 24:14	140:25	caused	267:18,22	
careful	172:23	107:13	269:16,18,	
167:14	198:24		20 270:17	
170:17	199:7,8,22	ceased	272:18	
	205:2	198:25		
cares 78:23	218:14	cell 109:6	Chancellor	
caring 78:13	231:8,17	274:8,11,	140:23	
	250:5	17,18	190:14	
carry 27:9	252:17	central 36:6	change 39:13	
89:5		79:8,10	40:8,13	
103:14	cases 57:8	123:8,9	242:11	
111:8	58:10		278:18,22	
113:11	107:1	Certificate	279:5,7	
114:11	111:21	63:2		
132:7,24	138:7	certified	changed 22:2	
133:3,10,	153:12	13:24	259:6	
22 136:17,	154:3	280:4		
23 171:16	159:21,22,		changing	
183:1,6	24 163:18	certify 76:1	100:23	
185:23	167:6	cetera 48:10	Chaplain	
218:7	193:20	141:13	94:12	
	218:18	143:23	charge 35:19	
carrying		156:17	67:16	
31:11	casual	210:11,23	89:22,24	
64:23 65:6	166:20			
67:14		CFR 196:21	charged	
68:21 69:9	catchall		30:12 34:3	

Charlotte	chemical	205:4	237:10
10:13	82:13	206:17	239:20, 22
check 10:21	115:3, 14	207:22	242:1
81:20	121:3	208:2	chose 232:13
83:4, 18, 21	123:12	229:22	chosen
84:1, 4, 14	164:14	232:5	180:13
88:16, 23	165:4	238:2	chronological
89:10	185:3	239:18	214:8
90:23	195:24	243:16	circumstances
95:12	196:16	244:4	109:24
100:24	206:19	246:12	113:17
104:13	225:3	259:8, 14	206:15
105:13, 19	246:14, 15	260:9, 16,	citing
106:13, 15	249:24	19 261:18	156:18
109:20	252:9, 16	262:14	citizen
247:15, 18,	chemicals	chemicals, '	50:19 52:9
23 248:4	29:3, 24	187:2	citizens
249:15	30:15	Chief 35:12	50:23 51:1
258:14, 20,	32:4, 7, 17	43:7	230:15
23, 25	73:16	child 166:9	claimed
259:2, 17,	76:24, 25	chloride	200:2
18, 21, 23	79:17	77:14	clarification
260:1, 12,	82:10	135:4, 11	37:12 68:2
15 261:16	83:22	136:2	98:20
265:23	86:11 88:8	146:25	clarified
266:1	94:22 99:9	147:11	73:1
271:18	111:11	148:3	clarify
272:5	121:20	236:8	30:17 32:6
checked	122:1, 6, 17	258:12	37:4 43:15
82:12	123:15	262:18	45:19
checking	124:3	choice 86:7,	121:17
60:11, 13,	132:12, 20	10, 13	242:16
15, 16	133:7	139:17	clarifying
148:25	149:15	239:3	275:10
checks	153:3, 6, 7	241:18, 22	
259:18	193:2	choose	
	194:12		
	198:25		

classify	cold 210:23	19 83:1	277:2
38:21	211:1	90:1,19	Commissioner's
clean 183:7	College 25:6	92:12,16	109:19
cleaner	combination	93:9 97:2,	124:22
174:11	122:7	10 98:10	commissioners
clear 14:1,2	comfortable	99:24	40:19
39:19 56:2	155:6,21	103:21,23	73:12
159:14	180:23	108:1,20	committee
169:21	Commissioner	122:3	42:6,8,10,
261:9	8:6,9,11	124:9,12,	25 43:1
clearer	16:23	20 125:23	51:6
173:2	20:9,15,	126:24	common 73:19
clearheaded	17,23	127:2	129:1,6,19
14:17	21:10	131:6	221:25
clever 14:23	22:1,12,	134:12	222:5
client's	13,16 24:7	139:15	commonly
271:4	26:8,9,18	140:21	222:22
clients	27:11,24	142:9	communicate
50:22	28:9,13,21	143:4	109:23
clock 139:11	29:10,18,	151:10	110:5
close 139:13	20 30:3,19	155:9,12	122:5
154:14	31:9,16,	170:6	communicated
159:15	19,25	173:10	76:21
236:18	32:22	180:21	communicating
250:22	33:12,14	185:18	123:8
closer	36:10,16	188:19	communication
185:25	38:3 40:15	190:12	109:3
cocounsel	42:8,17	220:9	127:25
275:2	43:9 46:23	228:5	communications
code 47:20	47:9,10	237:15	69:12
222:21	57:7,21	238:6	110:2
223:1	58:9 59:2,	239:12	274:21
coffee 17:14	12 61:7	240:11	community
	67:20	242:10	25:5 34:9,
	69:2,11,17	243:11	
	72:19,22	266:23	
	74:6 80:6,	272:14	
		275:11	

17	completeness	compounding	219:11
comp	15:16	125:3	conducting
221:13,21	Complex	128:8	39:16
companies	22:25	195:13	89:10
210:11	23:12,22,	216:5,14	confer
	24 24:1	229:20	184:20
company	complicated	concentrations	conference
211:4,10	241:10	216:25	8:17 17:2
Compel 12:10	complies	concern 58:5	conferences
190:4	63:3 64:18	147:11	70:8,9,12,
compelling	201:3	148:9	13
140:23	complying	concerned	confidence
compensation	215:16	39:17	133:8
184:8	compound	194:1	163:19
compilation	29:7 77:5	concerns	179:23
173:15	183:6	276:20,25	180:20
Complaint	195:14	concluded	181:5
18:17,21	214:18	280:13	268:8
19:25 20:6	216:6,9,15	conclusion	confident
53:5 56:5,	223:6	208:5	103:11,17
6,15,20	224:18	conclusions	124:7
57:1,5	229:8,23	207:12	133:2,18
58:9,15	235:14	condemned	136:22
62:9,10,16	compounded	84:22	137:9,24
141:25	115:19	conduct	170:10
266:17	124:25	70:1,2	171:8
complete	125:3,6,7	81:20	181:1
16:17	126:4,9	83:4,18	242:23
98:2,6	127:4	84:14	confident-
completed	131:25	98:11	175:6,15
184:9	132:1	conducted	confidential
	183:14	83:21	44:14 46:1
completely	185:3	101:20	52:6 91:19
90:10	189:12,17,	111:7	95:6
224:24	24 194:20		96:19,21
226:12	218:17		

confidentialit	83:4,18,	179:10	166:14
y	156:14,	21,25	275:1
	19,20	84:4,14	contacts
	157:5	88:16,22	112:21
	160:9	89:10	contained
	175:4,7,8,	105:19	164:2
	15 226:24	106:13,14	content
confirm	147:21	consulted	92:22
	224:19	45:15 74:7	145:25
	259:24	75:20	146:1,3
	277:15	144:8	232:14
	258:20,23,	153:25	contents
confuse	15:3	154:6	12:20
	24 259:2,	180:18	149:24
confused	18,20,23	contact	152:19
	15:4	108:20	164:20
confusing	261:16	109:15	192:21
	54:3	115:9	243:24
conjunction	41:9 206:5	121:5	context
	38:12	122:24	26:23
	82:23	157:16	166:4
	106:20	158:4	contingencies
	148:17	159:4,5	17:9
	277:3	165:15	contingency
connect	212:19	195:6	84:24 85:4
	277:13	201:7	86:16
conscious	constitutional	213:23	87:7,23
	125:13	218:4	107:20
	105:14	263:14	262:13,20
	247:18	271:6,22	continuation
	258:13	272:18	205:1
	260:4	275:15	continue
	261:8,15	280:6	220:9
	265:23	contacted	238:16,25
	266:1,4,6	239:4,7	263:18
consciousness	164:21	contacting	
	81:20	121:21	
	165:2		

continues	conversation	Corecivic	24 94:7,
101:16	76:15	35:1,2	10,11,13
119:21	89:14	corner	95:2,3,6,7
216:5	128:25	117:2,14	96:21,24
260:17	130:3		106:10
	166:12,18	correct	108:24
continuing	167:22	8:18,19,	112:16,19
188:24	169:12	21,22	113:1,4,5,
contract	219:4	15:21,22	7,8,11
95:9,16,24	231:11,16	16:3 32:8,	115:14,17,
182:9,19,	234:25	9 34:12	18,21,22
23,24	235:4,6,18	39:1	116:7
183:18,19		42:11,21	118:4,5,
184:13,18,	conversations	43:4 44:4,	10,11
24	29:13	5,7,8,10,	119:1,2,7,
	58:14	11,15,16,	8 120:3,4
contracted	129:21	19,20,24	127:17,18
34:25 35:2	132:16	49:16,17	131:21
contracts	150:3	51:3,4	137:20
95:18	154:17,20	52:17	139:2
184:21	169:5,7,	53:10	149:5,12,
203:7	18,24	55:24	18 153:1
	170:8,16,	59:25 60:1	156:21
contradictory	24 218:24	62:16,17,	161:9
238:25	232:14	21 63:17,	164:25
239:2	240:15,20	18 64:2,3	165:1,7
control	copy 47:2,	72:23	184:15
17:17	20 56:7,9	83:19	186:11,14
228:12	61:3 62:14	85:1,2,4,	187:18
controlled	63:15	5,11,15,	188:21,22
79:13,14	116:17	16,18,21,	189:7,8,21
	135:17	24 86:5,9,	191:10
controls	141:20,22	20 87:18	193:23,24
203:7,12,	145:16	88:1	194:3,4,7,
17,24	173:2	89:18,19,	16,17,21,
204:3,7,13	174:7,11	22 93:4,	22,24,25
convenience	250:23	10,11,14,	195:6,7,9,
269:10	279:3	15,20,22,	10,15,16,

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: correction..counsel

21,22,25	25 246:1,	127:22	71:21 72:2
196:1	25 247:13	132:7	73:6,13
197:1,2	248:6	145:18	75:3 92:12
198:17	249:5	170:6	98:2
200:7	252:13,14	182:4	121:10
202:3	253:3,5,9	186:23	134:2
207:4,5,7,	254:8,17	196:3	137:8
8 209:16	255:6	198:5	150:4
210:4	257:9,13,	200:24	152:24
213:12,13,	14,18,19,	201:7	199:2
17,18,25	23,24	203:15,22	218:5
214:3,4,	259:22	204:2,6	219:1
12,13,15,	260:1,20,	206:6	253:18
16 215:18	21,23	208:1	correctly
216:17,18	261:2,23,	230:15	13:15
217:7,21	25 262:1,	234:16	65:16
218:23	3,4,6,7,	243:2	95:21
219:6,18,	11,12	255:21	120:6
19 220:18	267:4,5,15	256:9	163:16
221:9,17,	268:1,2,6,	266:23	229:17
18 222:6,	12,15,16	Correction's	234:10
7,11,12,	269:5,6,7,	136:13	267:20
14,16,17,	8,21	213:4	cost 206:18
18,19,24,	270:9,10	228:12	256:8,10,
25 223:3,	272:15	correctional	18
4,7,8	correction	22:19,21,	cost-
224:10,15,	20:10,16	25 23:11,	prohibited
16,19,20,	24:14,17	22,24 24:1	256:19
22,23,25	33:13,14	128:15	coughing
225:1,4,5,	36:16	161:1	91:14
7,8,24	40:15	229:25	counsel 8:12
226:13,14,	42:17	corrections	9:11,13,17
16,17	43:24	8:10 20:21	10:5 13:1
228:3,4,	44:12,17	24:20	43:7,10
20,21	72:13,22	33:18 39:3	50:9 53:22
232:15	74:7 76:17	40:19	54:9 57:23
238:11	85:18	69:22,23	
245:22,23,	92:16		

63:15	countries	136:16	245:10
91:23	25:17	140:15	258:1
94:17	country	141:5,17	Court-ordered
95:13,17,	25:16	142:21,24	140:4
22 96:4	Counts	150:18	234:17
100:2	266:16	157:23	256:17
101:11	County 35:2,	171:16	Courts 240:2
108:21	3 50:19	173:5	266:21
109:5	couple 12:16	181:15	cover 139:24
110:3	43:25 46:9	185:6	251:9,12,
129:17	97:6 193:4	190:6	19
134:7	court 11:5,	197:25	covered 68:9
144:21	10,17	199:3	150:23
145:5,15	12:4,23	201:4	156:16
186:10,23	13:1,5	215:10,16	234:14
190:3,13,	15:17 18:7	219:8	covers
16 191:21	46:11,14	226:24	108:13
198:18	47:15 49:2	228:9	crafting
233:9	52:14,17	233:25	44:23
237:21	57:20	234:3	created
267:3,7,	60:24	251:1	210:16
13,16,17,	64:24	255:20,24,	credibility
24 268:9,	76:1,4	25 271:6,	153:17,20
19 269:2	107:16	7,23	credible
271:2,22	110:9	272:19	128:3
272:12,17	111:9	275:15	199:17
275:13	116:13,23	280:4	Criminal
276:9	117:4,11,	Court's 12:9	25:2,4
277:24	19,22	13:22	crisis
279:11	118:2,7	74:12	254:11,13
Counsel's	119:4	75:12,22	crowded
54:1 57:4	120:1	140:11	267:10
95:15	125:11	142:18	cumbersome
counseled	130:16,19	143:10,19	
89:9	134:13	150:12	
counter	135:14	228:13	
25:24		233:10,14	
		234:8	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: current..decision

200:2,19	127:10,15	David 36:13	death 15:21
current 40:3	136:6,8	117:23	64:25 94:9
82:14	137:16,18	Davidson	104:14
101:19	141:11	50:19	132:8
133:16	142:18		193:16
238:18	143:22	Davis 10:13	194:15
custodian	146:7,8	53:20	241:18
47:25 48:6	182:12	74:14	257:2
custodian's	184:10	143:6	269:15,16
48:1	189:25	279:22	Debbie
custody	191:8	day 16:11	186:23
213:5	194:2	56:18	Deberry
228:12	199:5	84:12	78:12,17,
cut 78:7	210:3	200:14	19 79:6,9,
cutdown	236:5,12	229:17	18 253:20
104:19	241:17	278:17	Debra 43:1,6
	251:24	days 48:7,	134:7
	252:12	13 49:15	173:13
D	dated 19:4	126:3	251:13
	46:25 49:6	184:6	deceased
D-e-a 222:20	62:20,22	201:16	87:11
daily 26:21	63:5	241:16	104:15
232:3	116:25	DEA 79:11	December
data 60:16	134:19	197:15,16	118:3
date 20:2	142:10	198:2	137:18
56:16,23	143:10,19	223:1	140:3
74:16	182:19	DEA'S 196:22	decide
100:18	185:11	dead 171:21	106:14
115:8	214:6	deal 178:17	107:9
117:5,18,	216:20	266:10	decided
19,24	217:10	dealing	82:11
118:3	dates 22:8	56:25	decision
119:5	53:2 82:12	86:18	46:3
120:1,24,	97:8 118:8	deals 86:17	105:15
25 122:22	193:18,19,	121:14	167:12
126:1	23 217:24		
	218:2		

170:9	Defendants	delay 48:19,	deny 48:10
171:2,6,	140:24	22 90:24	53:10
22,23,24	141:9	109:25	department
172:1,4	143:15,16	110:4	8:10 20:9,
208:6,17	144:6	263:14	16,20
209:1	Defender	delegate	21:10
233:21	9:20,22,25	35:22	24:17,20
235:24	10:2	111:18,23	27:23
236:1,9,	Defenders	112:4	28:2,4,8
12,19	8:16 9:15	delegated	29:6,13
237:13		45:6	33:18 34:1
244:2,8	Defense	111:21	35:25
272:15	267:3,7,	112:2	36:2,8
decisions	13,24	145:1	38:13 39:3
69:18,20	268:9,19	193:1	43:8,24
180:21	269:2		44:3,12,
declare	271:2,22	deliberate	17,21,23
104:15	272:12,17	166:21	45:5,7,8,
decline	275:13	deliver	13 47:11
231:3	277:24	32:17	50:5 53:22
declined	define 97:18	delivered	54:9
195:12	108:4	56:8 59:13	59:15,16
214:12	164:7	79:18	60:9,22
dedicated	defined	delivering	65:23
273:20	81:20 83:5	94:22	66:22
default	105:20	102:6	67:20 69:2
241:19	108:11	delivery	71:1,2,6,
Defendant	definite	37:8 86:24	20 72:2,13
141:6	277:8	87:25	73:1,5
143:7	definition	delve 58:2	76:17
202:17	202:23	demographics	77:25
Defendant's	265:20,21	193:16	78:9,23
53:4 54:13	degree 24:25	denied 53:14	79:16
61:8	25:5,8	dentist	82:10
130:25	Del 9:21	167:17	85:18,22
			92:11,16
			95:8 97:12
			98:2 99:6

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: department's..designated

101:16	207:25	203:15,22	185:7
106:6,12,	208:1	depending	190:7
14,19	213:4	254:16,18	202:11
111:7	217:23	278:5,6	228:6
121:10,11	218:1,5,25	depends	230:10,11
122:15	228:11	138:24	233:12,19
123:16	229:3	DEPONENT	245:11
124:23	230:14	280:12	251:1,10
126:2,4	233:23	Deponent's	278:25
127:3,22	234:15	245:14	279:4,9
128:6	235:19	depositions	
131:13,16	238:4	9:3	
132:2,6,23	243:2,13	Deponents	
133:9	244:8,23	74:18	Deputy
134:2	253:17	151:4	23:23,25
136:13,20,	255:20	deposition	43:8 93:8,
25 137:5,7	256:9	8:23 10:21	25 113:14
145:17	271:25	11:23	114:3
149:13	274:12,15,	12:1,5,9,	185:17
150:4	16 275:12	12,24,25	deradicalizati
152:8,9,	277:5	13:6,12,23	on 25:14
10,22	department's	14:21 18:8	Derrick
182:3	28:19	46:15,23	182:10
185:19,22	34:18 39:5	47:16 49:3	describe
186:2,22	53:23	52:21 56:4	74:19
187:2,12,	55:24	58:20	describes
15 188:3,	131:14	62:10	65:13
8,24	133:22	110:16	194:18
189:1,10,	136:16	116:13,22	195:2
17 192:7	215:11	130:19	197:4
193:25	234:19	140:16,21	describing
196:2	departmental	142:9,17,	148:6
198:4	40:2 64:21	25 143:4	description
199:1	66:14	145:9	145:21
200:5,8,24	departments	150:25	designated
201:6	74:6 75:2	151:3	67:7 87:14
204:1,5	76:14	181:16,23	
206:6		182:1	

93:13	determined	73:15	75:10
113:6	238:5	77:20	131:18
138:5	259:3	132:10	158:1
258:8,17	263:8	201:17,25	disagreement
designates	determines	203:4	169:22
93:1	83:6 260:3	205:2	disbelieve
designee	determining	direct 21:5,	158:25
48:1 82:9,	71:14	13 29:21	159:2
21 115:9	206:7	30:21 31:1	discharge
121:2,8,15	259:12	47:23	68:16
122:14,24	develop	49:21	disclaimer
detail	214:20	67:10	176:13
118:23	271:1	84:9,23	disclose
128:17	deviate	108:25	200:25
detailed	81:9,12,14	109:3	disclose-
66:12	diagram	121:5	226:23
details	269:13	126:25	disclosed
232:9	270:3	130:23	45:17
determination	diazapine	139:1	disclosure
105:13	147:15	271:13	48:4
106:18	difference	directed	226:23
168:23	32:16	82:5	discounted
235:20	103:3	directives	177:10
238:8,9	180:16	207:18,24	discovery
determinations	263:4	directly	74:23
207:16	difficult	21:1 29:14	140:4,24
determine	111:12	31:6 34:25	178:16
39:12 40:7	132:19	35:9,11	197:21
81:21 84:1	200:21	39:9 96:13	discretion
105:3,21	difficulties	164:5	67:14
106:16	76:18,23	250:1	237:9
131:20	77:7,11,	257:25	discuss
199:23	13,16	270:5	57:11
257:2,22	difficulty	directors	107:19
258:9		73:13	
		disagree	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: discussed..dose

140:2	231:18	Dix 9:19	documenting
151:3			101:5
187:1	discussions	DOC 175:25	
193:12	69:13	193:5	documents
196:7	70:10,14	199:2	45:16 46:9
278:20	75:16		59:5,25
	144:21	doctor	60:3,11,12
discussed	152:7,11	165:13	61:10
76:16	162:5	166:10	62:5,13,
78:10	171:3	167:22	19,20
100:22	180:4	document	63:6,13,14
114:15	196:7	11:15,20,	100:5
120:16	236:5	23 12:13,	101:2,4,5
144:25	280:5	20 18:5,14	141:10
234:21		19:8,19,	143:9,19,
265:3	dismiss	22,23	21 144:7,
	151:18,19	45:24 49:1	12,22
discusses	266:18	52:14	175:12
194:9		55:1,23	190:2,15
195:23	disposal	59:2,8	191:11,13,
201:14	161:16	60:23	15,20,22,
	disregard	61:8,14,19	23 213:3
discussing	151:20,21	62:3,7,8	215:10
81:4		63:4 64:1	219:12,14,
131:10	distribution	66:7 69:5	23 228:7,
174:8	203:7,12,	134:13	10 233:9
181:13	16,23	142:25	251:21
	204:2,7,13	156:15,16	
discussion	245:3	176:6	Doe 252:12
53:15		185:5	domestic
73:14,17	distributors	225:11	197:1
77:18	74:25	237:20	door 148:9
140:8,9	District	252:20	
146:4,6	199:3		dosage 264:5
149:25			
151:11,13	division	documentation	dose 83:11
196:2	20:20	137:21	88:1 90:4,
201:9	45:4,7	138:2	14,21
207:7,9,	46:2	228:11,22	221:22
10,20	divisions	230:19,20	264:8,11,
214:11	33:19	231:2	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: dot..e-mail

17	181:2	181:11	25:5
dot 9:10	185:25	183:1,6	
	188:8	186:3,19	<hr/>
double-sided	199:12	193:6	E
19:15	229:2	194:2	<hr/>
downtown	240:13	196:13	e-mail 19:4,
123:13	242:18,24	198:25	10 70:16
		205:20	134:17
dozen 31:22, drugs 28:15,		218:15	135:2
23 154:12	20 37:9	220:17	140:3,14
	75:18	222:23	141:15,20
drafted	76:19	233:3	142:10,21
236:13	82:5,8,16,	238:12	143:25
Drake 10:18	20,24	241:11	145:10,12,
draw 69:7	85:22	253:13	16,23,25
drug 31:3	86:1,4,24	263:16,20,	146:23
71:7,11	90:22 91:1	22,25	149:2,24
88:18	102:1	264:24	150:8,22
102:2,6	121:12		151:6,11,
103:9	122:11,15	dual 21:9	13,15,17,
118:14,18,	123:21	due 132:10	18,22
20 119:10,	124:8	duly 8:2	152:1,19
16 121:1,	133:3,9,19	duties 26:13	155:23
22,25	135:3,23	45:7	156:1,3,
122:4	136:12,23	66:13,17,	12,21
124:14	137:1,5,9,	20,21	157:2,8,11
126:19	25 138:6,	68:16 69:9	159:1
128:3,14	7,18 140:6	108:12	164:2,21
129:11	145:19	110:20	168:11
133:18	148:2,7	112:19,24	169:17
137:15	150:5	113:6,11	172:21
148:14	155:7,10,	duty 20:18	173:3
155:17,20	16 171:11,	108:17	174:6,8,19
158:23,24	17,18	109:22,23	175:5,10,
159:8,9	172:11	110:11	17,24
160:4	175:11	193:1	176:6,11,
165:6	177:13		18 177:9,
180:7	178:21,22	Dyersburg	11,12
	179:4,6		180:11,17

185:13	EEG	253:18,	efforts	29:5	emergency
216:5,20		21 255:7	74:19		16:24
217:8,17		256:21	238:14		266:22
e-mailed	effect	180:7	EKG	256:14,	emotional
187:4		183:25	21		276:22
e-mailing		184:14	elaborate		emphasis
181:9		253:15	186:2		66:15
e-mails		264:22,25	elapsed		67:11
60:11,14		265:8,9,	181:23		employed
157:6		10,17	253:7		20:14
173:11,15		266:10			22:18 23:9
177:3	effective		elapses		employee
178:17		171:10,12,	246:2		44:9 71:18
188:23		14 183:23	249:23		110:13
204:22		241:14	electrical		138:15
214:6,7	effects		270:12,13		191:25
Earl 117:23		147:13,16,	electrocution		employees
earlier		18,20	64:5		33:24 34:2
72:24		153:5	194:11		35:20 71:6
99:25		163:1	241:23		96:21
107:16		167:9	242:4		106:25
131:10		168:7	electronic		110:12
144:25		176:8	141:12		111:1
232:6		263:22	143:22		138:11,12
275:21		264:4	element		encompass
Early 197:14	efficacy		37:10		165:11
easier		150:13,17	elements		encompassed
122:11	efficient		25:22		110:22
241:14		171:10,12,	elicit		end 87:15
East 9:14		14	147:12,15,		148:10
Edmund	effort		18		185:23
117:12		129:10	embarrass		208:8,14
educational		158:22	16:9		ended 253:4
24:23		201:8	embarrassing		endorse
		209:5	10:22		

25:19	219:2	Europe	exception
endotoxins	entitled	227:10,18	91:25
183:16	75:15,21	evaluate	200:2
ends 213:19	143:7	214:19	218:13
enforcement	173:24	evening	exchange
98:4	184:7	51:20	145:16
engage	238:2	84:12	157:11
166:12	entity 35:1	event 48:4	213:20
267:1	environment	68:8 72:20	excited 20:6
engaged 29:6	183:8	107:9	exclusion
38:24	equipment	184:6	52:5 208:7
56:14	254:1,4,5,	262:15	Excuse 91:11
218:22	6 270:13	events 64:21	executed
engaging	equitable	66:10	255:22
103:11	184:8	evidence	executing
ensued	Erin 10:18	249:17,19,	67:22
207:20	errors 279:6	23	execution
ensure 33:19	escort	ex-- 88:10	19:2,3
40:2 82:23	273:3,6,10	exact 20:2	21:15
155:15	establish	22:7 31:21	26:14,19,
ensuring	108:20	33:5 97:3,	24 28:19
111:4,6	255:21	8 100:18	32:13,24
entered	established	126:13	38:15,17
141:18	124:10	146:7,8	39:9 51:21
252:21	171:9	154:9,11	55:15
entertain	establishing	158:19	57:10
200:16	25:13	236:4,5,11	61:21,22
entire 24:14	estimate	243:23	63:20
91:22	31:15	265:20	65:24 66:8
111:5	236:18	EXAMINATION	67:9,15,16
243:25	247:24	8:4	68:10
entities	Etomidate	examined 8:2	70:1,3,21
122:8	174:1	examiner	71:15
		165:23	72:3,4,14
			73:3 75:18

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: executioner..exhibit

82:1,5,6	185:23	246:18	39:23 40:7
85:23	186:1	247:2	44:3
89:15,17,	189:25	249:10,18,	106:23
20,21	193:18,19,	20 275:22	exempt 48:3
90:24,25	23 194:2,	277:25	
93:19	10 205:8,	278:1,5	exercise
94:16	11,19,20		68:7
95:10,25	206:4,7	Executioner's	105:10
98:10	217:24	246:24	
99:20	218:2,8	277:21	exhausted
102:23	233:3	executions	238:14,24
103:2,13	241:17,20	20:25	exhibit
104:2	242:11,21	21:8,12,18	11:17,18
106:2	244:22	23:6 24:2,	12:5,6,9,
108:5,19	246:23	5 28:15	24 13:6,7,
109:12,25	248:24	31:11 36:4	23 18:9,10
110:5,7,	252:18	38:15 39:4	19:1,4
13,24	255:8	40:20 41:8	46:15,16,
111:2,8	257:7,11	45:18,24	23 47:16,
112:24	258:12	69:16,25	17 49:3,4
114:11	263:11,15,	70:6,23	52:13,18,
115:8,25	18 265:7	71:3,6	21 56:4
117:5,18	266:22	108:10	59:3,6
118:3,7	267:18,22,	129:14	60:25
119:5	23 268:5,	133:4	61:1,18,20
120:1	11,20,22	140:7	62:10,25
122:22	269:18,20	163:25	116:14,15,
126:1,3	270:17	177:14	22 117:10
127:5,10	272:18	189:19	130:21
131:24	275:14	201:16,20	132:5
132:24	276:3	216:2	134:14,15
136:17		217:7,18	135:14,15,
138:1	executioner	219:16	20,22
161:7	30:15 31:3	245:1	140:19,21
163:3	32:3	262:18	142:3,5,9,
164:13,25	81:19,25	268:14	17 143:2,4
171:17	83:2,10		145:9
183:2,7	84:23 87:1	executive	173:6,8,
	99:9 103:5	35:5 36:7	20,21

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: exhibits..fair

181:16,19	162:19	Extraction	96:12
182:1		96:20	102:7,9
185:7,8	experiencing		103:1
190:7,8	258:10	eye 161:12	119:13
209:8	262:16	eyes 114:23	120:8
228:7	expert 55:12	261:7	123:11
230:11,12	153:2		125:5
251:2,7,10	experts	F	133:15
exhibits	153:5		177:14
50:7	expiration	face 119:23	204:1
134:10	82:12	122:20	241:13
exist 101:2	136:6,8	278:1	261:2
exists	137:16,18	faced 69:24	266:11
106:15	expired	205:10	factor 41:8
231:6	130:25	facial 96:7	facts 55:15
exit 269:3	131:4	119:22	56:14
272:23	136:25	150:14	factual
expect 11:2	137:15	facilities	132:15
35:18	157:14	21:2 22:24	fair 35:23,
230:18	244:18	23:10	24 66:18
expectation	expires	33:20	76:15,20
102:13	135:8,11	34:20,22	108:23
238:17	explain 15:9	facility	110:18
experience	48:18	24:18	112:3
40:23	49:25	26:21 36:6	127:7,8
154:1	explanation	37:20	132:3
158:16	118:21	51:17 52:1	175:22
160:5,18,	193:9	78:13,18,	176:21
22 161:1	explore	20,21,22	180:14
169:2	172:20	96:19	189:9
experienced	expressed	97:24	192:18
161:6	151:15	253:21	219:12,13
experiences	extend 74:23	273:19	235:17
70:5	extent	277:6,17	242:9,14
152:13	112:14	fact 29:1	248:17
		42:24,25	249:6
		93:18	

fall 111:14	fee 221:13,	13 119:12,	122:15
260:1	21	16	232:4
			239:10
familiar	feel 106:4	fill- 248:10	
12:19 89:4	124:7		fine 16:10
98:12	133:2,17	filled	80:10
111:25	137:8	126:22	197:21
114:12	147:23	final 207:16	
120:7	148:1,6	255:24	finishes
124:15,19,	155:18	276:17	247:7
24 125:5	163:20		firsthand
145:25	242:23	Finally	153:8
146:1,2	261:10	195:13	159:7,9
165:4	268:8	financial	164:4,7,9,
255:10		256:8	11,14,23
256:10	fell 128:9	find 28:3	fit 91:14
	129:2	29:23	
family 10:23	fellow 15:20	35:21	flip 19:12
270:4		50:11	182:8,22
	felt 28:7	102:12,13,	183:21
fault 181:17	158:12	21 104:19	floor 17:3
FDA 198:24	179:20	111:12	flow 246:15
199:21,24	180:23	122:3,4	flush 102:2
200:5	181:1	129:10,12	240:15
	229:12	156:4	
February	245:7	158:22	focus 192:2
56:6,9		174:22	folks 277:16
59:14	field 159:24	196:10	follow 83:7
97:14	figure 57:15	200:9	88:19
100:3,11	58:1 181:3	201:11	199:17
130:13	197:14	204:9	
133:21	207:2	209:5	follow-up
213:22	file 117:1,	212:12,15	187:4
	13,24	217:14	275:9
Federal 8:16	127:15	229:7	
9:15,20,		238:15,18	follow-ups
22,24 10:1	filed 18:17		279:21
198:24	56:6 57:6	finding	
199:2	199:2	78:15	footer
206:15		104:16	156:11,14
	fill 113:9,		

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: Footnote..give

Footnote	free 67:13	game 140:1	193:9
130:24	81:9,13,	166:6,8	207:10
force 184:14	16,24 82:4	garage	257:17
forced	front 13:10	269:17	267:18
278:12	76:5	gather 76:8	269:3
forget 46:8	107:18	191:20,22	271:12
forgive	134:11	234:10,19	276:11
234:12	142:8	gathered	279:11
forgot 20:7	173:11	107:12	General's
form 41:16	270:5	191:23	10:10 54:5
54:20	273:16	gathering	127:21
151:14	fulfill	194:1	128:20
234:13	114:4,5	gathers 99:6	130:14
formal	258:17,19,	gave	131:3
166:24	22	159:11,19	134:4
forward	fulfilling	168:9	279:1
67:17	248:10	278:21	generally
81:25	full 185:14	gender 71:25	33:23
123:15	250:23	general	74:19
137:10	full-scale	24:13 33:6	generated
244:9,14	98:3,15	50:9	205:21
Foso 74:4	250:2	53:22,25	give 34:9
found 60:18	255:1	54:9 55:4	48:24
104:18	fully 15:7	57:4,23	52:15
162:11	function	75:16	56:23
194:13	45:11	95:14,17	57:25
229:9	functions	100:1	81:11,16
fourth 174:5	67:6	110:21	82:25
185:14	future	111:5	83:11
188:16	178:16	132:14,18	90:12
frame 16:18	245:1	134:7	139:21
22:11		136:15	165:9
237:4		145:5,15	166:5
	G	165:22	192:7
	gained 72:25	186:9,23	276:16
			277:8

giving 56:22	216:1	238:7	hands 239:16
116:1	221:2,11	guided 67:15	handwriting
167:18	graphic	237:22	220:23
184:4	207:1	guideline	227:23
264:8	Great 55:7	67:5,12,24	handwritten
glasses	greater	81:7,8,10	220:16,18,
156:13	168:9	guides 237:9	25 224:6
GMP 214:21,	Greg 35:13,	gurney	handy 52:13
24	14	266:13	happen 17:6,
good 8:6	ground 9:2,4	270:6	7 41:3
78:18 80:8	guess 21:9		90:20
81:14	27:10	<hr/>	98:14
82:13	29:21 39:8	H	99:11
139:4	41:1 69:12	Habeas 8:16	273:13
220:11	98:13 99:4	half 154:12	happened
235:9	122:10,19	Hall 10:6	123:3
governing	155:6	Halloween	146:17
196:21	180:12	146:12	231:8,17
government	181:3,7	halt 110:4	235:4
35:4	199:18	hand 111:24	259:4
159:25	204:19	116:11	278:6
160:1	215:4,7	122:13	hard 129:11
206:16	221:22	173:1	278:16
Governor	232:11	181:14	Hardeman
35:10,11	242:14	185:5	23:2
44:6 109:2	256:2	251:5	harm 107:13
110:9	guests 11:3	hand-delivered	276:22
129:16	guidance	56:7	harmful
Governor's	13:3 69:8	handed 46:22	264:3
108:21	90:13	61:7	harsh 205:5,
109:1,4	104:2,16	181:25	10,17,24
110:3	105:3,18	handle 13:3	206:2
111:2	106:1	95:18	Harwell 10:1
grade 211:10	guide 67:13	184:21	
grams 215:22	68:1,3,11		

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: hate..hospital

hate 181:18	heavy 223:5	16, 21	233:16, 22
he'll 13:16	224:11	125:16, 22	234:4
14:5	held 20:10	130:18, 22	235:5
head 35:15	helpfully	133:14, 20	244:13, 15
154:24	237:22	134:16, 22	245:13
190:11	helping	135:1, 16,	250:25
223:2	58:10, 13	21 138:19,	251:3, 8, 16
heading	155:5	21 139:9,	252:3, 7
210:20	168:22	14, 20	253:25
health	helps 42:4	140:18, 20	258:5, 6
254:11	58:17	142:4, 7, 24	275:6
hear 14:15	69:17, 18	143:3	279:23
21:24	Henry 8:5, 12	150:16, 21	280:1, 10
heard 77:24	10:25	151:9	Hey 167:18
78:2	11:16, 19	158:1, 3	high 206:19
98:21, 22	12:7 13:8	159:16, 17	highest
161:22	18:7, 12	169:10, 16,	201:4
246:10	41:23	19 170:18,	
265:18, 19	43:19, 23	19 173:5,	HIPAA
hearing	46:10, 12,	9, 21, 23	156:18, 22
55:13, 19	19, 21	177:5, 7, 22	hit 176:14
65:15	47:18 49:5	178:1, 4, 9,	hold 21:19,
69:21	50:17	15, 20	21 23:14
160:13	52:16, 19	179:2, 11,	44:2 124:1
167:15	55:6	15 181:20,	honest 16:1
274:15	57:15, 18	24 185:9	156:7
hearsay 14:5	59:7 61:2,	188:1, 7,	Honor 233:14
heart 171:20	6 64:12	17, 18	hooked 250:7
255:5	74:4, 9	190:5, 9	hope 17:5, 7
256:15	75:8, 13, 25	197:13, 19	58:17
heavily	76:3 80:1,	198:2, 9	250:21
222:18	12, 15, 18	202:6, 10,	259:9
224:3	91:13, 15	15, 17, 24	268:13
225:12	96:11, 15	203:1, 21	hospital
	107:15, 23	204:20	79:4
	116:9, 10,	208:12, 21,	
		23, 25	
		220:3, 6	

254:16		identity	implementing
255:2	I	51:15	36:4
hour 16:16	I-n-d 221:2,	74:23	245:16
128:9	11	159:15,18	importance
228:19		195:5	172:23
230:13,21,	I-n-s-t	221:20	
22 235:2	224:13	233:17	important
		258:8	15:23
hour-and-15	i-s-o-t-o-p-i-		16:25
16:12	c-a-l-l-y	ignore	151:22
	216:23	244:23	206:5,11
hour-and-a-	i.e. 196:23	ignoring	230:14
half 16:12		210:23	232:8
hours 11:6,8	idea 139:11	II 48:9	importation
111:17	214:2	196:23	196:23
181:22	ideas 80:25	222:23	198:23
202:24	identical	III 183:21	199:9,25
220:2,12	49:9	ill 113:18	200:6
253:2	identified	114:2	imported
274:25	270:3		199:1
278:14		illegal	
houses 78:22	identifies	245:7,8	importing
huge 148:9	198:3		195:24
	identify	imagine	196:3
huh-uh 16:2	71:22	56:17	
human 264:8,	95:15	immediately	imposition
22	198:1	183:23	64:24
	201:5		impossible
hundreds	268:10	imminent	200:19
239:4	269:22	127:5	
hyper-		impact 14:14	improper
exaggerated	identifying	264:7	178:12
266:2	104:1		in-person
	197:10	implementation	73:5
hyperalert		36:23	
265:14	identities	107:20	inadequate
	197:18	140:8,9	197:1
	233:15		incarcerated
	268:21	implemented	34:6
		245:17	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: incidents..information

incidents	68:25 99:7	164:23	142:19
162:25	116:1	165:3	143:23
include 11:9	151:15	168:3,16	144:2,9
34:7 39:23	158:5,13,	175:14	145:3,19
76:25	15 160:3	180:8	149:13
77:3,7,10,	177:13	198:1,5	150:7
13,16	179:24	205:18	151:1,4,7,
88:7,22	180:13	218:21	23 152:21
129:16,18	181:9	222:22	154:19
196:10	184:23	232:25	155:3,5
240:7	195:9	240:16,20	156:16
249:14	205:22	254:10	157:25
274:2,5,7	215:1	255:4	160:16
	221:2,11	267:11	161:15,17,
included	230:9	271:11	19 162:17,
175:23	250:6,14	infirmary	20,22
228:14	265:1	254:3,7,14	163:23,25
includes	individual's	info 215:21	164:1
21:3	255:15	inform	166:25
including	individuals	127:20	167:16
74:20 75:2	27:24 28:1	information	168:18,22
147:10	30:6 40:17	29:16,19	170:7,15,
independent	42:19	30:8 40:22	23 171:1,7
183:14	51:16	41:1,11,	172:24
indicating	65:23	14,19	176:25
63:8	93:13 94:3	43:2,3	178:14
191:18	106:21,24	48:8 55:22	179:6
212:2	111:19	58:14	181:2
269:24	112:4	59:18 60:8	187:9
270:4	122:6	69:7,19	191:17
indications	138:4	72:25	195:6
261:14	153:25	107:12	206:11,22
individual	159:6,11	131:3,14	216:10
29:7 30:11	160:15	132:14	229:1
31:2,4,6	161:6	134:3	230:24,25
32:2 57:2	162:11	138:25	234:11,13,
	163:24	141:13,16	18 240:23

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: informed..inmate

informed	60:5 106:3	114:17,20	21 250:19
27:12		115:13	252:9,16
111:3	inject 83:3	122:17	253:13
127:24	249:3	124:11	255:14
128:19	injectable	129:15	269:12
198:6	194:21	132:8,11,	275:22,23
		21 133:23	276:2
Inglis 43:1,	injected	137:25	
6 45:20	83:22	145:20	injections
46:25	87:13	148:7	249:4
48:17,22	246:8	149:14	injects
49:8,21,24	264:14	150:6	247:2
50:6 53:21	injection	153:3,6,7	inmate 81:21
54:8	19:2,3	160:6,17	83:6 84:22
134:7,18	20:25	161:21	87:11,24
135:24	21:12 23:6	164:13,24	90:2,15
145:6,15	28:14	167:20	94:17 99:8
173:13	29:2,24	183:2	105:4,21
176:5	30:1 36:23	185:2,24	106:3,16
185:15,17	37:9 42:7	186:22	126:2
186:2,6,7,	44:24	187:2	171:25
9,23	59:19	192:3,8	172:9
187:14	61:21,23	193:2,12	205:14,15
189:13	62:14	194:2,6,13	241:17,18
251:13	63:16	207:13,21	252:12
	64:25	208:2	254:21
ingredient	65:6,25	232:5	255:23
77:4	67:9 68:4,	233:6	257:16,21,
ingredients	8,17,21	236:2	22 259:24
125:2	69:10,24	238:3	260:4,12,
128:7,14	73:6,9,16	239:18	13,22,25
129:13	76:18,23	241:19,23	262:10,25
229:8,9,	79:17 81:5	242:1,3,8,	263:23
19,22	84:5 86:8,	13 243:1	264:5
235:13	24 87:9	246:3,22	265:5,12
initial	88:4,13	247:16	266:1,3
87:12	91:17,22	248:11,21,	267:6
initially	93:2 94:5,	25 249:8,	
	8 107:25		

inmate's	insertion	94:12	interns
255:16	267:25	224:14	10:16
261:6	268:4	instruct	interposed
inmate/	inside 51:25	74:11 75:6	43:10
offender	145:17	instructed	interpret
259:3	175:10	75:23	221:5
inmates 34:3	198:4	212:12	222:9
35:21	212:16	instruction	interpretation
78:13 90:9	218:25	68:11	66:19
241:24	inspection	82:19	75:11 88:6
242:4	48:2,6	instructions	119:9,19
input 53:12,	install	68:1	120:13,17
17	277:13	instructs	interrogatorie
inquire 50:9	installing	13:20	s 58:25
75:15	274:2	84:13	interrogatory
inquiring	instance	intended	143:8
73:9	82:13	163:12	151:1
165:18	113:17	192:15,17	interrupt
inquiry	123:17	intent 89:6	107:8
214:10	instances	149:19	Interruption
217:3	90:2	244:25	86:23
insensate	institution	interested	introduce
90:3	75:2 76:14	99:5	9:8
106:17	93:18	160:15,21	investigate
259:24	109:18	215:23	205:9
260:5,7,8	126:8	216:8	involve 98:4
263:5	182:3	interesting	201:20
insert	185:21	216:8	248:5
249:10	254:3	interfere	involved
inserted	256:4	16:21	29:15 37:6
267:21	271:20	internal	39:9 51:23
268:11	272:13,25	214:11	65:23 71:7
inserting	276:21	216:24	72:8 96:13
268:6	277:12	institutional	111:23

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: involvement..Kissinger

125:2	278:20	242:5	Kathleen
164:5	item 141:11	269:11	10:5
195:12	items 140:23	Jerome 9:21,	keeping
250:1	IV 84:24	23	11:11
involvement	86:17,25	job 58:15	99:18
68:12	87:1 96:18	111:20	111:2,24
involving	102:7	156:10	Kelley 8:12
22:4 83:3	104:17	158:20	107:7
85:14	246:15,17	159:23	134:21
iphones	257:5	160:5	150:10
181:18	268:6	274:22	173:19
Irick 95:11	275:23	John 252:12	178:11
116:25	276:2	journey	233:14
117:5	IVS 250:7	173:4	251:16
127:11	267:20	judge 76:5	ketamine
irrelevant	268:1,4,11	judicial	148:16
96:10		108:10	174:1
133:13	J	110:23	key 66:14,
			22
isotopically	jails 34:8	judicially	kidding
216:23	Janet 47:3	67:8	116:20
issue 50:9	251:18	July 188:25	kind 13:2
87:23	January 19:1	June 49:14	18:6 21:9
113:20	59:19 62:1	76:4 132:9	40:10 56:2
125:14	63:13 64:1	133:11,23	71:15
138:18	92:3	135:8	112:9
178:24	100:20	136:17	128:8
196:22	116:25	157:14	167:21
229:14	127:11,17,	Justice	211:5
232:4	19,20	25:3,4	261:10
issues	128:18		278:16
78:12,14	146:10,20,	K	Kissinger
84:24 85:4	21 169:9,		9:13
134:25	15 188:21	Katherine	91:11,14
151:16	194:3	9:19	139:19
277:1	236:16,19		

148:23	150:13,19,	123:25	50:16
173:19,22	21 153:9	157:5	202:10
181:17	158:23	231:3	learn 163:4
202:19,22	159:7	large 47:24,	learned
245:12	160:3,6,25	25 211:13	29:17
knew 158:12	164:5,8,9,	222:3	141:14
159:4,6	11,14,23	264:19	142:20
160:20,23	167:8	larger 98:7	143:24
163:24	168:4	law 33:21	151:5
164:3	192:20	40:14 46:3	154:20
168:12,17	218:5,9,20	98:4	163:6
179:21,22	231:10	108:16	169:17
180:18,25	232:23	132:7	170:15,24
knowing 99:5	233:8	194:6	learning
181:4	245:15	lawyer 13:13	152:18
244:9	249:2	272:23	180:10
250:3	250:10	lawyer's	leave 267:21
knowledge	253:14	216:20	272:17,19
15:12	knowledgeable	lawyers 10:8	led 127:3
28:18	28:5,8,9	15:20	202:8
36:21	29:1	80:24	left 219:18
40:9,10	Knoxville	143:5	legal 28:1,7
52:11	9:15	206:14	31:11 43:7
54:12,17,	<hr/>	213:1	45:4,6
18,25	L	219:9	46:2
55:14	<hr/>	220:10	53:16,19,
69:25	label 136:7	227:14	24 54:8
71:10	labeled	laying 261:6	56:21
76:22 78:5	216:24	laymen's	60:21
100:8,10	laid 88:20	261:13	95:18
105:24	102:8	lead 8:12	108:21
118:17	landline	9:13	109:4
127:1	17:3	leading	110:3
129:1,7,19	109:6,11	38:15	129:17
138:13	271:21		144:21
139:1	language		
147:5			

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: legally..limits

184:20	7,17,21	236:2	40:7,18
193:21	69:10,24	238:3	44:3
196:11,16	73:6,9,15	239:17	124:22
227:3,7	76:18,23	241:19,22	163:19
239:10	79:17 81:5	242:1,3,8,	180:20
243:9,13	84:5 86:8,	13 243:1	LIC 115:10,
244:1	24 87:9	247:16	13 118:9
245:4	88:4,13	248:10,21,	119:1
267:16	91:16,22	24 249:8,	120:3,15,
276:12	93:2 94:5,	21 250:19	23 123:1,
legally	8 107:24	252:9,15	5,6 140:6
212:16	114:17,20	253:13	194:12
243:19	115:13	255:14	195:14
	122:16	269:11	201:18
legislature	124:11	letter 46:24	202:1
40:13	129:14	47:6 49:6,	205:4
legitimate	132:8,11,	9,11,19,22	206:7
196:25	20 133:23	52:15,21	216:15
length 62:4	137:25	61:10	219:5,6
Leroy 10:6	145:20	130:20	license
lessen 200:3	149:14	140:17,18,	79:11
lethal 19:2,	150:6	22 142:17	222:23
3 20:24	153:3,5,6	143:1	licensed
21:12 23:6	160:6,16	222:21	224:12
28:14	161:20	243:3,8,	life 125:7,
29:2,23	164:12,24	10,15,21,	25 127:6
30:1 36:23	167:19	24,25	132:1
37:8 42:7	183:2	244:5,20,	limit 218:9
44:23	185:2,24	24 251:9,	267:11
59:19	186:21	12,20,24	limited
61:21,22	187:2	letters	148:25
62:14	192:3,8	49:25 50:6	178:18
63:15	193:2,12	222:4,20	202:1
64:25	194:1,6,13	223:18	267:6
65:6,25	207:13,21	level 29:13	limits 116:3
67:9 68:4,	208:2	39:5,14,	
	232:5	15,23	
	233:6		

list 154:10	23:3,14		277:16
210:10,16	24:21	M	
279:10	47:11		majority
	101:9	machine	241:21
listed	169:4	253:18,21	make 10:22
66:18,23	235:8	255:8,21	11:17
67:1 87:8	249:9	256:4	13:17 16:5
155:7	253:14	Maclean 9:16	17:8 30:20
249:7	272:22	10:7	37:3 39:18
250:13			43:3 48:2,
listing	loose 123:25	made 40:5,8	8 51:22
66:12	lose 21:22	84:1	54:7 58:3
135:2	lot 26:15	101:21	65:19
lists 135:7	41:19	106:18	69:18 76:5
lit 226:22	56:18	131:12	98:12
literature	73:10,11	153:11	105:13,16
41:7 169:1	80:24	155:15	120:5
litigation	111:13,18,	159:1	121:24
124:13,15	21 113:16	163:25	132:1
240:1	122:18	172:1	134:21
Little's	134:10	179:18	139:25
42:8	144:17	186:12,16	141:25
live 50:14,	223:9	207:14,16,	147:3
18 125:16	261:19	18,24	158:21
local 34:8	low 17:16	208:6	160:10
locate	206:18	214:18	162:8
118:16	lunch 11:10	215:8	167:11
location	16:16	235:11,12	168:23
270:5	107:22	236:3,10,	170:9
logistics	118:23	12,13,19	171:6,22
245:15	139:5,8	244:8	173:6
logs 131:16	Luttrell	249:20	180:22
long 20:10	23:2	266:20	189:16
21:19	Lyle 140:23	main 78:22	206:19
	190:14	maintains	215:3
		44:13	233:11,18
		maintenance	243:12
		96:19	259:1

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: makes..means

260:2	236:3	marked 11:18	matter
272:1	242:13	12:6 13:7	152:12
273:24,25	manufacture	18:10	174:13
274:1	214:21,24	46:16	248:1
275:12		47:17 49:4	Maximum
276:18	manufactured	52:18	93:17
279:4	115:20	59:3,6	126:8
	244:7	61:1	182:2
makes 44:9		116:15	185:20
46:2	manufacturer	130:21	254:2
157:12	243:3	134:15	272:25
237:13	244:6,10,	135:20	
240:8	21	140:16,19	Mays 46:24
241:10	manufacturers	142:5	48:17 49:8
	74:24	143:2	59:16
making 69:19	203:6	173:8	141:10
171:2		181:19	143:7,16
235:20	March	185:8	144:7
250:20	117:14,24	190:8	278:25
man 16:25	185:12	251:7	
	186:13	252:2	means 26:16
management	187:7,14		66:16
31:10	188:2,3	marks 251:4	67:13
113:24	189:4,10	Martin 10:25	97:20
manner 230:1	mark 12:5	25:4	103:4
manual 19:2	13:5 18:8		110:1
61:22	23:1 46:15	massive	115:13
62:14	47:15 49:2	264:13	147:17
63:16,19,	60:24	master's	167:2
21,24	116:13	24:25 25:8	185:25
64:16,17,	130:19		194:10
20 65:13	134:14	materials	196:11
66:18	135:15	41:5 44:22	209:22
68:5,9,17	142:25	45:23	212:13
81:5,7,21	181:16	51:5,7,9,	214:3
83:5 84:5,	185:7	11 52:4,7	221:14
10 91:17,	190:6	54:12	226:1,10,
22 107:25	207:2	190:13	20 227:18
114:17	251:1	279:16	

meant 27:19	Melson	mentions	151:16
205:17	205:8,12	205:2	152:5,12,
	206:5		14 153:9
meantime		message	154:1
210:10	member 35:18	210:7,25	157:13
	72:2,13	211:15,17	158:17
mechanics	106:1	213:19	160:4,18,
89:25	130:6		22 161:8
media 205:25	231:11	messages	162:7,24
269:7	234:25	209:11,15	163:6
	235:19	213:11	164:12,15,
medical 55:3	250:6	met 8:20	24 165:6
78:22			166:3,13
165:13,18,	members	method 147:9	167:8
19,22	72:3,13	194:14	168:1,5
166:2,19	96:18,20	196:16	171:24
167:6	103:1	207:13	172:2,18
168:8,15,	106:19	238:19	174:22
24 169:1	111:10	241:15,19	176:7,9,
261:11,12,	146:5	242:8,25	23,25
20,21	149:25	271:9	177:18,19
262:2,8	150:2	methods	188:3,20
	152:21	107:14	189:2,11
medications	207:25	205:19	201:21
14:13	268:5,10,		202:4
medium	22	micrograms	203:2,13,
141:12		217:1	24 204:3,
142:19	memory		7,13,23
143:22	58:11,12	midazolam	205:7,11
	232:7,9	32:18 71:8	206:4
meeting		77:8 81:19	208:6
141:12	men 15:20	83:4,11,23	209:3
143:23		84:15	235:21
193:11,14	mentioned	85:14	236:7
197:4,5,12	78:17	88:1,19	243:4
207:19	88:15	90:4,15,23	244:6,9,25
280:3	162:10	135:4,8	245:3
	228:16	136:1,7	247:3,5,10
meetings	275:21	138:9	
73:5	mentioning	147:11	
130:8,11	99:25		

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: midlevel..moving

253:15	248:3	monitored	278:14
263:10,25	253:7	27:2	Morris 10:5,
264:1,4,9,	273:2	monitoring	7
13 265:4,	274:25	21:14	motion 12:10
10,13	278:15	30:1,12	121:24
midlevel	missed 62:23	255:15,22	190:4
254:19	80:25	256:5	266:17
midnight	Missouri	monitors	mount
128:9	226:22	256:15	277:20,23
midway 117:8	misspelled	Monterey	move 58:20,
210:6	173:25	26:4	21,24
Miles 10:18	misunderstand	month 98:17	67:17
Miller	65:17	190:20	81:2,25
117:23	misunderstandi	191:14	83:10
118:3	ng 162:9	236:21	87:22
milligrams	Mitchell	243:23	96:17
83:23	10:9 53:20	monthly	107:4,24
84:15	143:6	30:25	123:15
milliliters	202:21	36:20	140:2,5,7,
217:1	model 25:15,	96:23	14 181:13
mind 101:3	20,22	97:1,25	198:19
152:15	modifications	98:8 99:2,	213:21
minute 22:17	39:7	13,15,16	234:6
43:14 84:8	modify	100:9	245:9
86:13	122:23	months 97:6	260:9
218:16	278:22	169:25	261:17
247:2	moment 61:17	235:7,10,	278:7
273:2	money 222:10	16 236:24	movement
minutes	monitor	243:22,23	278:4
108:18	26:14,16	morning 8:6,	moves 14:9
139:3	30:14,22	18,21	35:15
181:22	257:16	11:15	154:24
220:2	262:9	14:13,19	223:2
246:11	277:13	16:14	moving
		202:8	202:25
			244:14

multiple	5,6	nodding	230:2,4
209:4		154:25	
219:2	necessarily	155:2	notified
	121:6		123:20
multitude	256:25	noon 16:15	notify 90:18
277:1	necessity	Northwest	123:11
muscles	89:9	22:25	November
262:6	needed 40:5	23:11,22,	173:13
	185:24	24 24:1	
<hr/>			number 21:22
N	186:19	notation	31:21 34:7
	211:4	227:16,18	42:20
N-e-y-s-a	249:14	note 9:9	44:13,18,
187:13	272:17	96:5	21 97:3
naked 161:11	274:1	notebook	102:7
names 70:25	neglected	269:10	103:8
75:19	234:24		154:9,11
150:1	neighborhood	noted 133:14	169:5
170:22	154:15	138:20	183:10
192:5	networked	158:2	221:4
naming 76:13	69:22	177:6,23	223:17
narcotics	news 41:7	178:2	241:11
196:23	90:8	179:12	245:21
Nashville	220:11	202:12	267:8,11
50:14,18	newspaper	208:24	269:19
78:21	168:21	217:1	
185:21	185:11	notes 154:16	numbers
national	187:22	193:20	53:6,8
77:23	next-lettered	220:16,18	174:5
natural	173:6	221:1	209:17,20,
16:13,15	Neysa 187:3,	notice 11:23	21,24
nature 95:18	9,13	12:1	Numeral
131:20	night 202:7	175:4,7,8	47:24
Naval 25:1	263:18	184:5,23	nurse 78:1
26:3	nine-seven-16	231:4	165:13,14
Navy 26:1,	210:21	notification	
		33:8	<hr/>
		229:21	O
			<hr/>
			object 14:5

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: objection..offender

41:16 50:4	80:14	212:15	104:7
54:20 64:9	139:8	235:13	occasions
74:2,10	162:20	obtained	98:1
79:25	163:2	69:25	occur 41:5
125:10	220:5	74:21,22	65:5 66:10
138:17	247:14	118:8	146:6
157:23	268:20,23	136:21,23	166:4,19,
177:2	275:5	137:5	20 169:24
objection	observing	149:7	235:2,6
43:11	164:12	155:3,5	occurred
50:15 75:9	246:14,17	170:7	22:10
96:6	275:17	171:2	72:21 80:4
133:12	276:24	257:6	97:14
158:2	obtain	obtaining	100:7,8
177:5,22	28:18,19	28:14 29:6	124:16
178:1	29:2 41:7	73:15	126:21
179:11	74:19	76:18,23	146:16
202:11,12	75:4,17	77:8,11,	235:7,11,
203:18	79:13,16	14,17,21	19,24
208:24	85:25 86:3	118:14,25	occurs 65:12
233:13,14	106:12	119:1	October
objections	111:11	121:12	117:18
13:1,13,17	115:10	122:16	134:19
objects	119:6	132:11,20	offended
198:18	120:2,22	138:6	14:25
observation	121:3,20,	181:11	offender
257:21	25 122:25	193:2,6	84:2 90:23
observe	123:5,17,	196:16	104:14,15
26:19	18 127:4	201:17,25	105:14
261:1	128:2,21	203:5	155:18
267:14,23	133:6,18	obtains	163:17,20
268:5	175:11	85:22	172:12
271:2	176:9	obvious	259:17
276:2	185:25	65:10 82:9	261:15
277:25	187:16	261:7	266:12
observed	199:13,24	occasion	
	201:8		

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: offenders..order

267:17	267:14	209:5	opioid
276:10	269:4		148:17
offenders	270:2,7,19	onsite	
34:6,7,8	271:5,21	273:11	opponent
67:23	272:20,23	open 148:9,	202:20
78:23,25	274:9	13 210:9	opportunity
	276:1	261:7	278:19
office 8:17		operate	opposed
9:15,20,	officials	33:20	273:24
23,25	60:9 69:14		274:17,20
10:2,10,14	70:7	operated	
36:7 54:1,	76:17,21	34:24	option
5 56:8	77:20		105:6,11
57:4 89:17	152:7,8,	operates	113:12
109:1,16,	10,24	35:3	163:7
19 111:3	180:5	operation	188:20
123:8,9	192:7	216:9	200:17
127:21	193:4	operational	222:10
128:20	219:1	67:6	236:11
130:14	older 21:22	operations	239:15,16
131:4	on-site 79:7	20:20	242:3,6,15
134:4	one's 217:9,	22:23	259:7
191:19	10	23:22	260:8
271:12		33:17	274:7
279:1	one-drug	35:12	options
Officer	72:8	51:18	109:7
35:12	239:25	159:25	196:9
187:10	240:7,8,	160:2	200:9
	12,24		201:11
officers	241:3,6	opinion 55:3	211:20
34:16		158:7	239:9
official	one-on-one	163:7	274:6
92:11	70:10,14	168:4,13,	
121:9	ongoing	14 241:1,2	oral 161:25
131:5	102:10,16	243:18	
168:16	131:13	opinions	orchestrate
229:2	132:10	55:13	206:16
240:11	199:16	168:10	order 12:10,
			24 13:4,9,

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: ordered..paragraph

22 69:8	258:1	20:19	148:1,7
74:13	272:18	33:17	155:19
75:12,22	ordered 11:5	93:19	163:21
81:16	67:9 82:24	108:9,11	241:5
82:4,10,	111:9	110:23	258:10
15,19	150:18,25	overseeing	259:25
107:16	200:24	108:15	260:8
115:8,10	219:8	oversees	262:16
117:4,11,	255:20,25	21:11	265:4
21 118:9,	256:17		pan 246:18
17,25		oversight	275:23
119:6,10,	ordering	110:25	
12,15	82:7,8	111:5,15	Pancuronium
120:2,12	orderly		148:19
121:22	34:21	<hr/> P <hr/>	149:10
122:25	orders 64:23		paper 205:22
123:6	76:7 83:9	P-e-n-t-a-s-o-	231:2
126:9,16	116:12,23	1 225:14	
127:14	120:9	p.m 84:11	paperwork
140:11,15,	141:6,9	p.m. 142:11	215:15
22,25	171:16	173:18	219:10
141:18	215:23	174:16	paradoxical
142:18,22	original	176:18	265:8,9,
143:10,19	56:6	280:14	10,17
144:24			266:10
150:12	out,' 185:23	packet	paragraph
173:16		116:12	53:6,8
189:24	outline	173:1,11	59:22 67:4
190:14	139:22	174:6	74:17
201:4	outset	190:6,12,	84:13
213:3	236:23	17 191:17	88:10,15
215:10,16	override	228:14	107:10
228:9,14	272:14	pages 18:25	115:6
233:10,15	overseas	62:4 191:1	117:8
234:2,8,10	195:25	pain 105:4	132:5
245:10	196:4,14	106:4,17	152:12
254:18	oversee	147:21,23	183:3,5,22
255:24			184:3

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018 Index: paragraphs..pentobarbital

185:14,16	61:7 74:6	parties	pento 176:14
186:25	90:1 97:10	15:14	211:3
188:16,17	99:24	183:24	225:17
196:21	124:9		
199:20	127:2	parts 51:13,	pentobarbital
206:14	141:9	14,15,16	22:5 29:8
	142:9	party 59:17	101:23
paragraphs	143:7,16	75:2 177:4	102:15
53:13	144:6	183:25	115:17,20
paralegal	173:10	184:4,5	123:18
47:3	190:12	202:18,19	124:14,25
Parallel	228:5	pass 259:2	125:6,12
225:24			126:4,10
	Parole	passes	127:4,23
paralytic	34:10,11,	260:12,15	128:1,21
147:10	14,15,16		129:24
148:18		passing	130:25
149:4,9	part 26:1,	261:16	131:4,15,
260:20	13 30:24	past 20:2	17,25
	35:5 88:3	133:23	133:7
paralyzes	94:5,15,	191:13	181:14
260:22	19,21	214:18	185:3
262:5	99:14		186:13
	157:25	peak 253:15	187:16,24
parameters	163:10,13	pen 270:24	188:6,25
12:11,23	192:16,17		189:6,12,
paramount	236:22	pending	14,18,24
172:23	239:14	131:1	194:20
parent 166:9	participate	Penitentiary	196:3,10,
Parker 8:1,	95:10	23:1,13	24 198:7,
6,9,11,14	110:12	pentaobarbital	15 199:10,
11:14	111:1	32:18	14,16,25
12:4,8		75:5,17	200:6,10,
14:12	participated	77:1,5	25 201:6,
16:23	30:7	85:10	8,12 202:2
46:13,22,	114:12	102:11,19,	203:3,5,6,
23 47:9,10	163:24	22	8,17
50:4 52:20	particulars	pentasol	204:8,11,
59:2,12	125:4	225:14	14,23

208:7,18	98:12	277:4,5	person	30:14
209:2,6	106:21	percent	96:1	48:21
212:10,15	111:10	perform		94:15
213:8	112:4			95:4,15
215:3,6,	129:9	163:12		134:6
12,21	144:18	201:15		138:25
216:7	150:3	247:18		145:2
218:2,6,	152:13	performed		149:2
10,13,17,	153:7,8	159:10		154:5
19 221:9,	154:8,11	163:11		157:13,16,
12,21	158:11	246:18		18 167:24
222:24	159:4,5	performing		171:4,5,18
223:11	160:14,19	67:8		176:24
224:1	162:5	258:20		178:21,22
226:7	163:11			179:4
227:17	164:3,4,22	performs		180:10
228:18,24	165:2,8	258:24		192:20,24,
229:8,16,	167:5	perimeter		25 193:5
24 231:15	168:13	91:18 98:5		211:1,9
232:4,20,	169:6	period	22:2	217:11
24 233:2	171:4	169:4,6,		218:3
234:20	179:21	11,23		220:16
236:7	180:5,17,	170:4		227:21
238:15,16	23,25	221:2		232:22
239:11,13	181:8	267:19		233:11
240:4,17,	184:21	periodically		248:10,14,
21,24	197:18	36:19		18 258:7,
241:13	198:4	permit	200:6	16 261:24
242:20	217:12	272:12		275:15,16
pentobarbitone	218:24	person's		
223:22,25	219:20	93:3		
225:3	230:8	permits		147:20
	239:6	196:22		158:19
people 27:23	240:23	255:15		178:14
39:8 73:11	267:8	permitted		
77:25	271:12	107:19	personal	
78:6,9	272:1	267:25		54:18,25
82:6 89:5	276:9	272:19		55:14

70:10	195:12	272:4,7	25 119:6
139:1	218:4	273:17	120:2,9,12
147:5	pharmacist	274:8,11,	122:25
180:19	119:11	13,17,18	123:5
192:20	128:13	photographs	126:9
232:23	177:16,17	135:22,23	physicians
233:7	178:5,8,	phrase	165:19,21
241:1	11,12,14,	98:21,22	166:2
250:9	23 182:5,	120:7	pic 211:16
274:18	15,18,23,	255:10	picks 38:25
personally	25 183:5	265:18	39:1
131:9	184:7,19	physical	picture
142:23	219:4	137:6,12	211:14
158:12	228:17,23	physically	picturing
159:4,6	229:6,11,	277:12,14	167:16
160:25	19,21	physician	piece 231:2
161:19	230:7,12,	87:13	pinching
179:21,22,	20 231:5,	95:9,24	248:5
25 180:24	18	96:7,9,13	Pino 9:21
181:4,6	pharmacokineti	104:1,10,	place 30:22
199:11	cs 165:6	12,25	51:22
206:12	pharmacologist	105:2,7,	56:17 96:3
219:3	165:12	18,23,25	113:25
240:10	166:1	115:9,23,	146:14
247:14,17	pharmacy	24 116:3	169:7
273:23	79:7,8,10,	121:2,15,	189:5
personnel	18 125:3	21 122:25	198:14
66:14,22	195:13	165:23	203:6,12
persons	213:22	167:25	248:14
145:3	216:6,14	254:19	266:9
pharm 224:6	229:20	257:1,7,15	271:20
226:16,19	phenomenon	263:21	places 75:20
pharmaceutical	265:11	physician's	176:11
77:4	phone 70:14	95:1	Plaintiff
pharmacies	109:6	115:10	
74:24	271:17	118:9,17,	

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: Plaintiffs..potential

9:14	point	71:12	52:4	252:4	239:17
Plaintiffs		73:22 74:5	pose	207:3	244:17
8:13 85:23		76:12			
206:8		78:19 80:8	posed	129:23	possibility
230:16		83:19 84:1	position	8:8	118:15
241:21		104:20			195:24
258:9		119:14			198:22
262:15		167:13			200:16
279:19		168:2			213:16
		195:11			possibly
Plaintiffs'		196:20			70:15
59:4 61:9		205:3			104:18
63:15		207:6			105:8
91:23		239:4,5,9			176:3
143:18		241:4			236:25
150:14		242:19			
190:15		263:12			Postgraduate
263:1		276:5			25:1 26:3
plan 16:11		279:19			potassium
140:1					77:14
	point's				135:4,11
plane 257:17		179:18			136:2,8
					146:24
planned 67:6	policies				147:10
	111:4		positioned		148:3
plans 16:20			246:22		172:15
107:20	policy 33:21				236:8
262:13,20	poor 232:7,		positions		258:12,15
played 57:5	9		23:15		262:17
			93:12		
plays 122:15	poorly		153:17		
	14:23,24,				potency
pleading	25		possession		183:15
143:5			124:4		
pleasure	pops 261:7		131:17		potential
280:3	port 263:21		132:3		128:5
			136:13		129:2
pled 56:14	portion		137:6,12		195:18
	222:13		144:14		196:9
plenty	245:9		149:17		239:8
227:10,17			228:12		
	portions				

powder	100:11,15,	prepared	235:8
225:18	19	111:8	prevented
Powerpoint	practices	241:12	180:9
191:2,3	99:9	276:16	previous
192:3,6,	101:6,20	prepares	124:13
10,12,21,	104:4	247:8	191:3
25 193:3,	247:20	prescription	217:9,17
8,15 195:2	248:9	118:18	price 221:8,
206:24	practicing	119:10	10
207:10,14,	101:22	120:7,8,	pricing
19 208:3,	102:3	12,14,22	215:23
5,9,14	103:2	121:22	216:8
powers	practitioner	126:17,22	primarily
174:21	78:1	present	22:25
175:19,23	165:13,22	104:1	28:11
practical	preclude	267:25	45:10
48:5 103:3	128:13	268:3	103:10
practice	preface 30:4	275:13	205:25
9:18 10:6	prefer	presented	primary
30:13	254:21	191:6	68:10
98:3,13,	preferable	192:13,19	86:25
22,23,25	240:9	193:10,13	108:4,7
99:2,6	preference	207:11	122:16
100:2,6	240:6	preserving	176:19
101:16	preferred	13:19	240:3
103:3,12,	159:3,5	presume	242:8
15,20	preliminary	250:16	principle
104:5,10,	11:8	presuming	102:5
21 105:17	preparation	215:15	printed
111:6	27:10	pretty 15:23	186:17
114:8	prepare	36:17	printout
154:1	15:16 27:8	108:17,22	185:10
247:15	38:14 98:9	110:21	191:18
248:12,23,		155:1	225:2,7,9
24		230:14	
practiced			

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: prior..production

prior 22:17	pro 10:7	42:2	68:24 88:7
23:8,17		51:10,23	
24:5 72:21	Probation	57:10	procure
85:22	34:10,11,	64:22	187:1
100:11,19	13,15,16	65:5,14	procured
102:19	problem	69:17 80:5	138:7
108:18	111:25	87:10	procurement
124:12	271:1	88:18	115:2,7
127:19	problems	89:4,5,21,	207:21
128:17	255:5	24 94:19	
146:9,12		95:19	procuring
176:23	procedure	97:24	208:2
191:13	31:4 33:21	98:13	produce
235:19,24	68:19	99:14	59:24
241:16,18	88:5,14,20	100:22	141:10
258:14	90:18 91:8	104:3,13	213:3
	104:19	105:1	
prison 20:19	procedures	108:15	produced
22:23	19:3 21:17	111:2,6	60:4,5
25:11,12	51:21	113:23	97:12
79:3	61:22	114:14	134:18
186:19	64:22	123:11	140:24
	68:24	124:8	176:6
prisons	160:6	162:21	190:3
20:16,18,	170:13	163:3	233:9
23 22:1		167:11	234:15
24:7	proceed	180:8	248:17
25:11,12,	123:22	193:6,21	
14,25	260:16	199:23	product
26:9,18		200:1	244:7
28:13	proceeding	214:21,24	production
32:22	131:1	238:18	59:5 61:9
36:10	proceedings	240:24	62:13,18,
103:24,25	280:13	241:10	20 63:12
		250:3	143:9,18
privacy 17:4	process	260:10,17	191:2,21
156:17	30:24 31:5		206:13
	37:7,14,15		216:20
private 9:18	38:23	processes	220:10,15
10:6 17:2	39:10,21	38:20	
35:1			

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: productions..protocol

228:9	promise	16:8	84:13	136:24
252:2	promptly		85:7,10,	137:10
productions	48:2,5		11,13,14,	138:8,18
234:17	pronounce		24 86:1,4,	140:10
products	148:22,24		8 88:20,25	146:10
216:22	257:2		89:25	147:10
profession	260:6		90:12,17	150:13
153:12	properly		91:7 92:2,	151:14
159:22	67:6		3,10,11,	152:3,4
professional	properties		15,22 93:1	155:8,21
69:22	164:15		96:6,9	160:20,24
106:22	165:5		97:13,17,	161:21
166:15,21	225:3		25 98:6	162:18
167:7	protocol		100:11,23	163:12
168:14,15	22:3,4		101:17,22	167:12
241:2	27:11,15,		102:4,8,9,	170:10
261:12,20,	16,19 33:7		24 103:2,	171:9,10,
21	37:6,13,		12,14	15,25
professionally	15,23,25		105:5,9,20	172:2,6,9,
154:2	38:2,10,		106:15	12 188:21
professionals	13,16,17		107:14,21	189:4,6,
69:14,24	39:2,13		112:18	13,23
152:9	40:3,4,8,		114:13,21,	190:25
165:18,19	24 41:6		22,24	194:19
166:19	42:7 51:6,		115:1,16	196:17
168:9,25	10,18		118:6,13	225:24
169:2	55:16,17		119:3,6,	233:4,6
program	59:1,20		19,23,25	235:21,25
25:14	63:14,21,		120:14,17,	236:2,9,
prohibited	25 64:5		21,23	10,13,15
64:8	67:19		122:10,20,	237:5,6,7,
256:18	68:23		21 123:4,	9,11,14,
project	69:1,4,10		15,21,22	18,23
246:23	72:5,8,10		124:11	238:6,9,
	74:20 82:3		126:5	13,19
	83:3,17		133:3,6,	239:14,18,
			10,19	19,20,21,
			135:3	22,25

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: protocol's..publicly

240:7,8,	26:25 30:9	63:14 68:5	provision
12,18,25	40:22,25	91:22	30:5
241:3,6,7,	55:22	100:1	156:15,19,
15,16,24,	59:17 69:8	105:18	20 237:8
25 242:2,	101:8,13	134:2	255:13
12,22	104:2,16	135:24	273:12,14
245:16,20	105:2,25	141:14	
247:6,16	109:17	142:19	provisions
248:25	129:13	143:24	156:18
249:1	131:2	145:3,12,	275:12
252:9,18	132:13	14 151:5	public 8:16
253:12	142:18	156:7	41:13,17,
255:7,14	150:25	157:13	21 42:1
257:5,11	161:25	173:12,16	43:11,12,
261:4	162:6	177:13,17	17,21
262:19,21	163:19	179:4	44:15,18,
267:3	165:24	190:13	25 45:2,8,
269:12	168:17,25	206:22	12,18,22
273:13	169:20	212:25	46:5,7
protocol's	181:1	215:9	47:4,12,22
263:7	183:1	228:8	48:1,3,16
	190:15	237:6	51:2,7,12
protocols	191:21	241:17,22	52:5,8
21:11,17	195:5		91:19
36:23	196:25	providing	97:11
37:18,20	215:10	65:13	100:4
39:22	217:2	101:3	131:11
44:24	218:15,19	110:13	134:18
51:17,25	219:5,9	137:9	135:25
68:10	221:20	144:9	145:13
73:7,9	228:18,23	145:19	173:14
85:17	241:24	150:1,7	186:12
111:4	274:13,16	176:24	187:9
147:8	279:3,17	178:21,22	234:16
192:9		181:11	251:21
205:20	provided	192:5,24	
238:5	47:19	194:1	publicly
	54:13	218:17	42:23
provide 13:2	62:13	274:20	93:21,23

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: pull..question

94:1	145:12	putting 60:2	118:23
187:15	215:9		128:17
201:1	251:21	Q	129:4,23
pull 156:12	pursue 208:6	qualified	137:3
pulled	pursuing	41:17	139:18
230:20,22	200:12	241:9	140:5,14
pulling	purview	quality	141:24
230:12	95:20	163:22	145:10
purchase	push 30:15	quantities	155:14
79:14	246:14	211:19	157:1,21
229:12	247:4,5	quantity	158:24
244:9,25	249:10	148:25	162:9
purchased	250:16	217:2,6	166:16
243:18	277:25	264:13	169:14
purchasing	pushed 247:9	quarter 80:6	177:21
245:2	249:12,22	question	178:12
purpose	250:4,15	13:18,21	179:1,3,14
72:12 73:8	252:24	14:7,23	186:8
104:9	pushes 31:3	15:7 24:13	199:18
129:14	247:9	30:5 36:1	200:11
172:3,5,8,	pushing 32:3	41:16 42:5	204:19
11,14,17	99:9 102:6	43:16	205:15
192:6	103:4,5	45:19 51:8	207:2
193:14	240:13,14	54:20	208:16
purposes	249:24	57:3,17	211:2
96:8 174:2	250:7	62:23	212:5
216:25	253:1,7,13	73:4,23,24	234:12,13
254:24	262:14	75:24 76:2	238:22
269:10	put 51:22	81:15	245:5
pursuant	55:5 66:3,	86:13 93:5	256:14
11:25	15 67:11	95:21	257:25
134:18	73:22	96:14,17	259:9
135:24	192:24	97:22	260:3,18
140:10	193:3,10	99:10	261:11
143:10,19	215:14	105:22	265:22
			276:13
			280:4

questioning	84:8	122:23	159:2
96:10		168:20	172:18
107:11	quicker	184:17	242:19
148:13	14:10	243:25	256:20
160:12	quickly 11:7		276:7
180:6	246:7	readily	
205:19		121:23	reasonable
278:15	quote	122:12	102:12
	185:22,23	142:12	215:5
questions	205:5	146:24	238:17
13:14,24,	214:12	176:12	265:25
25 14:15,	quoted 221:9	reading	reasons
18,22	quotes 205:5	42:14	74:21
18:1,3		164:20	195:20,21
27:5,6,18			
28:5	R	reads 84:11	reawaken
29:21,25		147:25	260:13
30:4	Rachel 10:17	148:8,15	
32:20,25	radar 200:15	185:16	reawakened
33:2,5,7,8	radicalization	210:8	262:11
44:1 54:24	25:11,12,	ready 186:21	recall 28:24
55:10	24		32:5 33:9
80:25		Reagan	46:4 47:8
123:24	raw 125:1	112:10	49:12
125:20	128:7	real 81:1	60:13
140:13	229:8,9	193:23	61:16
145:11	Ray 95:11		77:19
152:15	116:25	reality	141:1,2,3
155:8,11	127:11	122:1	144:23
162:7		reason	183:20
187:4	reach 253:15	48:19,22	184:25
227:24	272:24	49:18	229:7,17
234:10	reached	57:17	278:24
266:16,24	195:2	97:21	
275:10	210:11	98:19	receipt
279:20,23,	257:17	102:14	115:7
25	read 27:15	110:4	122:21
quick 81:1	42:13 88:9	131:18	243:14
	90:8	158:25	receive

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: received..referring

36:25	56:9	262:10	46:5,8	224:13
82:18		265:8	47:4,12,22	226:15,18
184:7			48:1,16	227:12
243:21	record	8:8	51:2,7,12	redactions
259:11		11:11	52:5,9	197:3
		13:19	97:11	213:15
received		16:5	100:4	222:8,16
36:22		44:18	101:15	223:5,10,
100:3		48:3,5	131:11	11 224:7,
149:14		75:10	134:19	11,17
162:12		80:13,17	135:25	
163:23		91:13	145:13	refer 13:11
184:22		96:6,12	173:14	63:19
207:15		138:17	234:16	140:15
243:7,9		139:10	251:22	142:16
244:5,20		181:20		145:8
		220:4,8	recourse	264:16
receives		248:14	271:6	
259:15		250:22		reference
		252:10,16	red 83:25	78:11
receiving		275:1,8	redacted	173:18
56:12		279:16	101:10	174:3
126:9		280:10	142:10	referenced
164:20			176:14	206:3
recent 205:8	Recorder		182:16	
	94:9		198:23	references
recess 80:14	248:11,21		199:21	206:10
139:8	249:8,21		211:21	225:21
220:5	250:19		213:24	referrals
275:5	recording		222:14,18	169:1
recipient	99:18		223:13	referred
176:9	248:16		224:3,24	115:23
recognize	recordings		225:12	referring
11:22	249:20		230:25	53:19,21,
18:14,23	records		redaction	23 54:8
106:2	43:24		182:4	98:16
175:7	44:13,22,		211:13	126:17
220:19,21	25 45:3,9,		221:17,19	143:14
225:9	12,18,22		222:3	

149:8	98:3,15	252:4	20,21
refers 147:1	rehearsals	reliable	58:11,13
198:21	30:2,7	153:8,11	59:11
223:19	96:24 97:1	155:19,20	60:10,15,
reflect	relate 54:24	156:1	17 97:6,7
91:13	related	157:19	126:13,14,
181:21	68:18,20	158:12,17	20 128:24
reflecting	141:10	160:3	130:12
59:18	143:21	162:6,11	146:7,8,18
reflection	162:7	164:1,6	158:18,19
249:9	266:24	168:18	165:17
250:12	relating	172:25	170:1
reflects	59:18	177:18	207:17
16:5	215:11	178:5	229:7
refresher	217:8	179:5,9,19	232:8
39:8	relationship	180:2	236:4,11
regained	180:19	relied	243:22
106:4	relative	153:7,10	remembered
regard 67:19	152:11	rely	265:20
Region	162:20	197:20,22	remembering
22:20,22,	release	219:11	267:20
24 23:11	91:20	relying	remembrance
regular	199:3	15:15	130:3
165:25	relevance	197:22	remind
regulations	14:5 79:25	remain	119:21
199:22	relevancy	183:24	render
rehearsal	203:19	275:16	155:17
26:24	relevant	remains	171:18,21,
30:22	96:13	184:14	25 172:9,
31:1,14,24	150:14	remember	12
32:7,24	162:23	14:14 20:1	rendered
36:20	163:5	22:7 28:16	90:2
97:13,16,	169:2	33:5 42:14	162:25
18,20	180:3	53:2	163:10,14,
		56:12,16,	16

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: rendering..responded

rendering	173:5	62:12,18,	176:13
265:12	181:15	19 63:12	requires
renders	185:6	100:5	48:12
264:25	190:6	131:11	240:14
265:14	251:1	134:19	research
reobject	reporter's	135:25	227:4,7
14:9	11:11	143:9,18	researching
repeat 14:8	reporters	145:13	198:22
88:9,13	185:19	166:24	199:21
279:12	reports 90:8	217:19	200:5
repeating	161:19,22,	234:17	reserve 87:4
87:9 88:4	23 162:1,	244:2	resolution
239:6	4,10,12,	251:22	199:6
repeats	14,15	requested	respect
88:11	represent	215:21	20:24 21:7
report 35:9,	12:8 22:9	217:7,18,	55:15 56:4
11 37:22	47:2 59:13	20 219:15	142:17
38:1 42:1,	97:9	requesting	203:2
10 112:8	173:12	219:5	206:3
231:14,19,	187:6	requests	207:20
20	represented	44:19,22	208:1
reported	54:4	45:9 59:15	253:12
90:9 229:3	130:15	97:11	256:14
reporter	136:15	131:13	respectfully
11:17 12:5	187:15	182:25	214:11
13:5 18:8	representing	require	respecting
46:11,14	15:20	29:20 30:6	245:10
47:15 49:2	request	55:3,12	266:20
52:15,17	45:1,3,18,	83:17	respond
60:24 76:1	23 46:5,8	required	47:12 50:6
116:13	47:5,12	132:7	76:8
130:19	48:10,16	261:21	responded
134:13	51:12 52:9	267:14	48:18
135:14	59:4 60:4,	requirements	50:10,11
142:25	6,9 61:9	108:16	

81:22	responsibiliti	rest	138:14	58:9 61:18
responder	es 20:24	Restate	51:8	279:3,15
48:9	33:15	result		reviewed
responding	35:23	151:25		37:2,18,25
45:8	36:17	152:18		39:4 42:7
response	66:13,21	164:19		44:23 52:4
45:13,17	67:8,19	196:6		147:7
48:12,24	68:20	199:22		reviewing
57:8 60:4,	93:2,7,9,	207:14,19		21:16
5 61:8	10 110:22	208:3		reviews 19:8
62:12,19	responsibility	results 38:1		38:13,22
63:12	30:21	retailers		39:16 41:4
97:10	33:16,23	74:25		61:19 62:5
129:24	34:19	return		63:6
130:4	45:11	243:16,19		175:12
143:8,17	69:16	244:3,7		191:15
144:5,6,	111:19	returned		237:20
10,11	233:1	87:13		revise 40:24
145:4	responsible	243:5		revision
173:13	31:10	reveal 51:15		39:13
176:8,17	33:25	258:7		61:25
187:3	34:21	revealed		Richard 9:24
190:3,14	40:20	268:21		right-hand
210:22,25	67:21	review		117:2,13
211:9,20	68:25 69:3	27:11,14		rights 271:4
213:1,11	82:22	37:7,14,		righty 12:3
214:14	92:21,23	15,20,23		risk 241:5
219:16	99:17	38:2,6,10,		Riverbend
228:8	121:11	17,19		21:3,6
233:10	129:9	39:15,21,		26:20
259:17	261:24	22 40:1,2		79:20
responses	responsive	41:6,10		93:17 99:3
18:18	83:6 84:22	42:2 44:15		126:8
49:22	87:25	45:12		182:2
56:22	90:15	51:6,10		
100:4	228:13			

185:20	rolling 14:4	run 44:12	251:18
254:2,7	Roman 48:8,9	275:25	sat 43:1
272:25	183:2,11,	running	satisfactory
Robert 10:9	21	34:21	184:9
205:8,11	Ronald	210:8	Saudi 25:18,
206:5	112:10	239:9	19,22
rocuronium	room 8:17		scale 98:7
148:19	17:2 32:1	s	scenario
149:10	80:24	S-u-c-c-i-n-y-	83:1 87:17
role 21:6,9	246:24	l-c-h-o-l-i-n-	schedule
22:16	257:16,20	e 148:22	84:12
23:6,20	261:22	safe 51:23	196:23
24:6 26:8,	267:15	112:1	222:23
13 27:9	269:3,4	235:23	280:7
28:14,17	270:2,4,7,	250:18	scheduled
29:17,20	8,11,12,	safeguards	95:10
30:14,19	16,20	107:13	108:19
32:2 33:12	271:5,11,	266:9	189:19
35:4 36:3,	21 272:20,	safety 34:4	193:18
14 57:4	23 274:9	256:3	Schofield
60:2,7	276:1	271:19	182:10
68:7 69:1	277:21	276:20	School 25:1
72:21	278:4,6	SAITH 280:12	26:4
93:17,23,	rooms	saline 32:8,	Science 25:2
25 95:1,15	269:19,23	11,17	scooch 61:4
104:9,12	round 90:22	77:17,21,	scope 74:22
108:5,8	route	23 78:10,	125:11
113:10,24	214:21,22	15 102:2	Scott 10:14
114:4,5,19	routed	240:14	252:3
122:2,16	243:12	250:8	screenshots
124:10,20	row 193:16	sally 263:21	209:10
158:19	rude 16:9	Santana 47:3	scrutiny
159:23	ruled 57:21	49:10	148:10
248:10	rules 9:2,4	145:14	
258:17,19,			
22 259:16			

205:6,10,	248:1	seeking	132:15
17 206:2		166:15	147:7,14,
	section 20:6		25 148:5,
search 29:23	34:18	seldom 33:1	8,11,15
60:16	47:21	sell 203:8	149:8
102:11,15	91:18,21,	204:10	150:15
188:25	25	216:22	186:24
194:24		222:23	194:15
195:15	secure 95:16	223:6	
199:15	102:18		sentenced
201:11	secured	selling	241:18
215:11	266:12	128:14	242:5
218:12,23	security	send 118:19	sentences
231:15	24:25 34:4	119:14	132:8
232:3,23	51:16,17,	210:10	148:4
233:2	19,21,25	229:19	
238:16	52:6 91:18	sending	separate
239:13	93:8,18	72:12	142:1
searched	113:4,15		164:17
219:22	126:8	senior	264:23
	182:3	106:19,22	275:25
searches	185:20	113:24	
219:10	254:2,24	123:10	September
searching	256:3	124:22	19:5
229:2	271:20		141:15,19
	272:25	sensate	142:11,20
season	276:21	105:4,21	143:25
146:14,18		sense 58:3	145:9
		132:2	146:19
seated 9:12	sedated	139:25	149:3,6,16
10:15	81:23,24	159:19	151:6
	106:3	189:16	164:2
secondary	265:12		168:11
84:24		sentence	169:9,15
87:1,22	sedation	15:21	173:3,17
260:9	260:25	64:19	174:7,20
261:18	265:13	66:11 67:3	177:10,12
seconds	seek 152:20	84:21	182:13,19
246:11	180:13	87:16	185:2
247:24	208:22	115:11,24	189:2

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: sequence..signature

sequence	87:3,12	share	154:19	125:15
214:8	88:5,8,17	155:4		131:16
series 214:5	108:12	161:16,23		134:12
	117:4,18	170:14,20,		135:13
serve 36:14	118:2	23 195:4		188:24
40:18	120:25	shared		210:13
served 26:12	121:24	162:16,17		212:1
30:14	127:11	171:8		219:14
42:25	136:21			269:9
104:10	189:25	sheets 99:25		
124:10	217:23	248:16	showing	
243:3	218:9	shelf 125:7,	11:15	
	238:18	16,24	278:1	
serves 32:2	259:8,14	127:6	shown 50:7	
36:3	260:9,19	131:25		
185:17	261:18	shift 278:8	sic 17:5	
Service 63:2	262:14	ship 224:8	24:7 30:3	
serving 71:2	sets 12:11	shipment	63:20	
168:16	91:3	198:25	87:13	
session	135:23	199:4	147:15	
100:2	194:5	shoot 211:23	162:9	
103:4,15	196:21	short 16:16	176:23	
104:5,11	setting 98:4	125:7,16,	210:21	
sessions	115:8	24 127:6	233:14	
30:13	118:7	131:25	261:7	
31:14,24	119:5	shortage	sick 78:14	
32:7 36:20	120:1	77:23	211:2	
100:6	122:22	78:10	sickest	
103:12,20	161:2	shortly	78:23,25	
105:17	229:25	149:1	side 19:16	
111:6	setup 103:7	show 12:4	sign 222:2	
114:8	severe	18:5 46:9,	261:9	
248:9,13,	258:10	13 47:14	signal	
23	262:16	49:1 52:13	81:18,24	
set 12:23	Sexton	59:2 60:23	signals 83:2	
83:10,25	36:13,14		signature	
86:19				

47:1 92:5, 8,12,14 175:5 182:10,15 279:2	Singapore 25:18 single 31:1 65:11 66:7 228:6	sit 49:14 site 70:18, 19 73:1,2 104:17 246:15,17, 22 275:22, 23 276:3	son 16:4 song 190:10 sort 14:6 24:13 48:12 57:24 71:11 139:21 173:3
signed 143:5 184:19 236:14 251:12	single-drug 22:4 189:6,12	situation 86:19 89:2 122:13 231:9	sorts 32:20, 25 39:11, 17 41:5
significance 162:3	singular 217:20	situations 206:17	sought 106:6,8 153:24
significant 64:21 66:10 206:20	sir 13:10 18:14 19:17 24:24 26:2 31:17	six-hour 16:18	sound 13:16
signifies 92:10	47:14,19 48:11,15, 25 49:6,13	skin 248:5	sounds 111:18 161:4 164:19
signify 92:9	50:13	Skip 220:14	
signing 183:24	61:17 66:12	skipped 20:5	
signs 104:14 106:2 265:8	67:10 92:2,6,24 112:17 114:21 116:11 130:13 131:10 157:10 176:22 181:14,25 185:5,10 187:21 200:23 218:21 241:4 242:9	slow 246:13 small 211:18 smaller 217:19 smoke 17:21 snacks 17:14 soccer 166:6,8 sodium 174:1 225:17 solution 101:25 183:15 194:21 216:6	source 69:7 102:22 118:16 119:14,16 124:7 128:5,7 129:2,12, 25 137:8 158:17 164:6 177:18 178:6 179:5,20 194:24 195:3,5,15
similar 199:14			
simple 33:8			
simpler 240:12			
simply 103:4 121:20 204:9 214:14			
sing 190:10			

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: sources..state

196:10	21 255:1	191:16	146:4,5
199:14,17	specific	193:11	150:1,2
200:25	13:3 21:6	specifics	158:21
201:5,7,17	33:9 37:7,	58:1 60:18	190:24
202:1	10 53:2	144:23	199:11
204:10,12,	54:11,24	speculation	201:10
22 218:20	56:16,23	236:22	219:7,11
221:16,20	73:8 75:19	speed 32:16	231:7,12
224:9	128:25	spelled	235:1,18
226:24,25	130:2	174:14	236:6
229:5,6,16	166:21	staff's 40:9	
235:14	168:2	spent 28:12	stamp 117:1,
242:20,23	211:22	spoke 165:17	13,24
sources 75:1	246:5,10	spoken 69:23	127:15
122:4	247:7	70:6	standard
128:3	258:2	spokeswoman	216:24
149:1	specifically	187:3	star 226:3,
179:20	9:4 29:9	spotty	9
195:18	47:7 48:3	148:19	start 8:7
204:16	56:11	149:10	11:14
239:7,8,10	59:10	staff 27:23	140:13
sourcing	60:13	28:1 33:20	260:10
210:12	61:15	36:6,7	275:8
space 223:14	68:18	38:13	started 9:10
span 201:16	71:12	53:16 67:7	17:25 18:2
speak 155:22	89:8,13	71:21 72:2	starting
167:5	90:17	82:23	87:2
speaking	99:22	106:19,20,	starts
11:6 56:21	107:16	23 111:9	185:15
special	125:1	122:3	186:20
78:12,17,	138:3	123:10	210:20,25
19 79:7,19	145:5	124:23	211:18
131:5	150:23	129:8	214:5
253:20	160:17,21	131:8,20	state 8:7
254:15,20,	162:13	141:1	22:20
	166:15		
	170:1		

23:1,12	205:22	stating	139:4
24:5 25:5	states 29:4	216:13	150:11
34:17,22,	40:18	statute 40:4	171:19
24 35:12	64:19	41:7 47:20	208:17
44:9	66:12 67:4	48:12	209:1
50:20,23	69:15	108:16	239:13
51:1 52:9	70:7,22	statutory	stops 92:18
54:4 72:14	71:3 73:10	194:6	Storage
75:9 78:19	75:3,15	stay 110:7	115:2
96:11	76:22	160:8	straightforward 108:18,22
106:24,25	84:21	234:8	strap 94:24
116:24	86:25	257:15	strike 36:1
117:12,22	90:6,7	staying	57:2 137:3
131:3	109:22	159:14	170:20
132:6,13	115:7	steady	186:7
134:3	130:24	246:13	strong
136:14	143:15	step 206:16	147:13,15,
152:25	147:7,8	Stephen 9:13	18,20
185:25	152:11	Stephens	176:7
186:21	156:15	10:17	studied
230:15	161:4	steps 57:10	25:17
stated 44:2	163:8	65:24 98:5	Studies 25:1
130:5	193:17	193:20	stuff 11:8
149:23	195:11,17	195:9	142:12
158:7	196:12,18,	sterile	146:23
245:22	19 198:8,	183:7	147:1
statement	16 199:20	sterility	167:19
76:16	204:25	183:15	subject
132:22	205:3	stick 86:14	44:15
137:22	206:14	stop 57:12	51:11
155:15	210:22	87:15	52:5,8
158:9	212:16,17	90:25	91:19
186:16	213:14	127:9	110:16
statements	214:10,17		140:4
159:1	215:20		
175:15	216:22		
186:12	219:2		

152:11	265:17	supplier	64:24
174:13	suit 199:2	121:3,5,14	116:23
180:6	summary	128:12	117:11,22
213:22	64:20	133:17	118:7
subjects	65:1,4,9,	137:23	130:16
73:19	18,19 66:8	219:4	136:16
148:1	162:1	223:14	surrounding
submit	195:8	229:18	269:18
143:16	summation	230:21	survived
Subparagraph	65:3,4,9	235:1	266:17
47:23	Summer 10:17	suppliers	Sutherland
subsequent	summons 56:8	74:24 75:1	10:14 14:4
13:4 29:17	59:14	138:12,14	41:15
substance	super 167:14	203:9	43:14,22
57:1	258:1	239:5	46:17,20
substances	supervise	supply 122:6	50:15
79:14	20:19	124:8	53:20
substantial	26:20,22	130:25	54:19
213:15	30:13	131:14	57:12
222:13	33:24	133:16	61:3,4
substantive	34:14	137:24	64:8,10
32:15	supervised	197:1	73:23
substitute	21:1 22:23	198:7,15	74:4,8,11,
32:11	supervising	206:17,18	15 75:23
suffering	30:12 31:6	support	79:24 96:5
241:6	124:11	137:22	107:7
258:11	supervision	145:4	116:17,19
sufficient	31:2	supports	119:21
105:20	34:13,18	132:14	125:9,21
106:16	supervisor	supposed	133:12
158:15	8:15 21:5,	87:18,19	134:20,24
sugar 17:16	13 94:9	100:9	135:17,18
suggests	supplemental	119:4,23	138:16
	143:8,17	229:18	139:13
		246:8	143:6
		Supreme	150:10,19
			157:22

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: Sutherland's..team

159:13	63:22	77:25 88:4	249:18,19,
169:8,13,	synthetic	95:21 96:4	25
22 170:17,	214:20,22	100:17	talks 197:15
21 177:1,	syringe 87:2	101:12	204:22
20,24	246:3,4,8	107:5	Taylor
178:3,7,	247:3,8,10	131:19	187:3,9
10,19,25	250:14,17	144:18	TDOC 23:18
179:8	252:21	158:11	123:9
187:23	253:8	160:19	138:10,12,
188:5,9,13	syringes	161:5	15 154:21
197:11,17,	87:4,12	197:18	156:21
24 202:6,	88:5,17	204:16	157:3,5,9
13,16	102:1,8	213:16	170:25
203:18	103:5,8	232:3	175:9,11
204:15	241:12	276:12	181:10
208:10,19	245:21,25	279:11	182:23,24
233:13,20	249:11,13,	talked	184:18
234:1	22 250:4	218:14	191:25
235:3	252:24	230:6,9	212:9,11
244:11	253:2	232:2	213:12
250:24	257:12	240:22	216:13
252:5	277:25	talking	232:22,25
253:22	system	19:23	233:10
258:4	186:19	51:20 57:8	235:1,18
279:18,21,		63:25 90:5	236:5
24 280:6		158:22	TDOC'S 59:19
Sutherland's	T	160:15	team 10:4,
75:9,11		164:8	11 28:7
switch 84:23	takes 247:23	165:22	37:19
259:13	249:9	167:21,22,	38:11,17,
switchboard	253:14	24 168:3	25 39:1
273:18	taking	177:15	53:17,19,
switches	110:12	188:14	24 54:8
87:1	talk 9:3	189:13	56:21
sworn 8:2	33:11	218:21	60:21 94:5
synonymous	64:15	227:19	96:18,20
	73:10	238:13	

103:2,13	tendency	22,23	18,23
106:2	111:22	118:6	termination
112:3	tendering	127:21	184:10
184:21	46:20	128:19	terms 29:6
214:19	134:23	130:14,15	32:16 45:8
243:9,13	188:12	131:11,24	184:13
244:1	252:4	133:4	261:13
248:24		135:25	263:7
250:6	Tenia 10:18	136:14,15,	
265:7	Tennent 9:24	24 145:13	terrible
268:5,11,	Tennessean	152:25	58:11,12
22 276:12	185:11	173:14	testified
technical	187:20	177:14	8:3 42:24
214:19		182:3	232:6
277:16	Tennessee	186:18,22	247:22
	8:10 9:14	189:5	262:24
telephone	21:13,18	192:9	263:11
108:20	22:2 23:1,	193:12	272:7
141:12	12 24:5,	194:19	
143:22	16,19	201:6	testimony
270:20	25:3,23	204:1	12:10
274:3	29:3 31:12	207:13,25	178:8
telling	33:18	218:25	272:11
40:16	34:17,25	230:16	testing
70:25	44:18	241:20	183:14
123:2	45:22,24	242:22	
137:4	47:4,20,22	245:1	Texas 198:24
161:3,5	48:16	251:21	199:1,2,9
244:21	50:14,18,	255:14	200:24
	20,23	268:15	201:3,4
ten 34:24	51:1,11		205:2
108:18	52:8,10	Tennessee's	
139:3	64:23	193:16	text 209:11
154:14	69:15 86:7	tens 35:21	210:7,25
216:2	97:11	term 99:2	211:14,17
217:7,18,	108:10		213:11,19
23 218:2,	116:23,24	terminated	there'll
11 219:15	117:11,12,	183:25	279:9
		184:4,15,	

there's--	279:10	three-syringe	146:8,16
38:8		101:25	169:4,6,
	thinking		11,23
thereto	207:3	Thursday	170:2,4
59:20		185:19	186:1
	thiopental	187:4,7	189:18,19
thesis 25:7	174:2	210:20	191:5
		216:21	219:25
thing 12:3	thought		222:2,4
14:6 30:17	229:5	THX 213:25	229:13
65:11 66:7			237:4
119:3	thoughts	till 80:6	239:19
133:5	212:5	222:4	242:11
235:23	thousands	tilt 246:19	246:2,5,11
256:25	35:20,21	275:24	247:4,7
			249:14,23
things 14:9	three-drug	time 13:12	250:13,15
21:15	22:3 72:4	16:15,18	267:19
26:15	85:13	21:16,22,	280:2
27:12	97:13,16	25 22:2,11	
33:22	100:10	28:12	
39:11,17	133:3,10	29:9,15	timed 58:19
40:12,14	135:3	30:2 37:21	timer 11:10
51:18 52:1	136:24	38:15	107:3
53:2,9	137:10	56:17,23,	275:8
54:25	138:8	24 58:21	
55:12	147:9	64:4 72:18	times 12:18
56:18	151:14	76:11	52:25 53:1
57:9,11,	152:4	78:15	209:4
22,24	160:20,24	90:10	228:16
58:13	162:18	108:19	248:18
60:12	163:12	118:15	249:7,21
65:5,21	167:12	124:20	250:20
70:5 120:9	170:10	126:24	252:20
121:24	172:2	127:5	
130:15	235:20,25	128:4	timestamp
146:16,17	236:2,9,10	132:19	174:16
164:17	240:18,25	136:14	tiny 174:5
205:23	241:7,15	139:4	title 143:12
211:21	242:22	140:10	156:10
232:18	252:17		

titled 61:8	232:18	training	trouble
182:2		26:14 27:1	111:24
192:3	tolerance	36:22	112:20
194:23	147:21	37:1,3,8,	true 66:2
titles 94:4	Tony 8:1,9	10 68:6,15	132:22
today 9:4	top 84:11	99:15,16	133:21
11:3,6,25	108:1	105:2,18,	138:15
15:25	141:5	25 106:7,8	154:4,7
16:20	143:15	153:16	187:16
49:14 50:5	176:10	158:16	189:22
64:4 85:10	210:2	167:6	200:20,22
131:10	214:9	246:7	202:2
132:22	221:1	247:19	203:25
137:4	222:20	248:8	204:4
144:25	225:12,23	259:11,15	232:12
156:8	227:9	262:2,9	257:6
210:8	252:9	trainings	trust 111:19
228:16	topic 25:10	21:15	112:5,10,
232:6	46:7	26:19	13 159:12,
234:21	130:10	Transfer	20 168:9
265:18	166:7	115:3	179:23
278:21	total 31:18	transferred	268:9
today's	245:24	79:19	trusted
63:20	totally	traveled	159:7
277:18	181:18	70:22 73:4	162:6
told 20:8	192:11	tray 87:4	164:6
125:8	tour 185:20	treat 255:4	168:13
128:6	toxic 264:3	treating	179:22
129:5	toxicity	16:3	truthfulness
138:14,25	265:4	trial 197:23	15:15
151:8,10	trace 173:3	trick 14:22	Tuesday
162:14	track 21:22	trigger	210:3
171:4,5	trained	40:12	turn 45:25
185:19	265:7	119:5	46:6 62:24
219:20			65:7 85:3
230:3			92:1,25
231:7,12			

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: turned..understanding

112:17	41:2 54:6	128:20	underst-
114:21	62:11,17	163:20	228:25
141:4	63:1,10	217:2	understand
174:4,17	83:12,14	262:10	14:18
190:2	84:18	unanswered	15:11,14,
216:19	115:5	50:1	19 30:20
252:1	123:19	unavailable	55:23
266:15	135:6	148:20	65:18 68:6
turned 60:21	142:8,15	149:4,6,	93:5
turning 60:7	152:6	11,15	119:18,24
91:16	158:8	194:12	122:11
twisting	166:11,17	206:20	156:24
248:5	167:1,4,10	210:13	177:9
two-drug	168:6,19	uncertain	233:22
72:10	170:12	132:10,25	247:13
type 128:11	175:1	133:2,24	260:2
211:3,22	197:2	136:18	263:2,3
typo 174:24	212:14	unconscious	understanding
205:7	221:3	84:2 90:10	32:10
typographical	222:1	155:18	68:16,22,
279:6	228:2	163:1,11,	23 80:3
	230:17	14,17,20	83:20
	252:11	171:19,25	89:16
	274:5	172:10,13	91:24
U	ultimately	259:4	99:1,12
	60:3	262:25	101:18
U-p-d-t-a-e-	67:15,21	263:8,9	119:13
174:14	69:3	265:1	125:24
U.S. 25:11,	171:19	unconsciousnes	128:11
12,14	umbrella	s 263:5	157:7
196:11,25	34:12	unconstitution	212:11
U.S.P.	un- 132:10	al 194:14	218:12
211:10	unable	Underneath	229:10
uh-huh	102:12	225:17	246:9,13
10:12,24	113:10	226:22	260:11,14
16:2 27:4,	114:4		267:2
25 33:3	118:15		276:19

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: understood..wait

understood	95:25	258:11,14	video 246:23
120:6	98:10	260:20,24	275:25
195:3	update	262:5,17	view 72:14
undertaken	173:24	vendor	violate
199:24	174:14	176:19,24	204:12
unidentified	190:21,23	178:20	256:3
270:8	192:4	vendors	271:19
unique 94:4	updates	177:15	violation
Unit 8:16	192:8	verbal	13:22
United 90:6,	upheld	231:11,15,	245:3
7 196:12,	125:12	19	271:3,8
18,19	226:24	verbally	virtually
198:8,16	upper 117:2,	38:1 229:4	206:19
212:16,17	13	230:3	virtue 93:16
University	useless	verifies	vision
25:3	119:17	92:13	134:24
unnamed	utilize	verify	visit 73:1,
59:17	237:14	112:11	2,10
unnecessary	utilized	Versed	visits
258:10	241:25	167:18	70:18,20
262:16	<hr/>	version	visual
unpack	v	159:9	257:21
122:18	vaguely	versus 8:14	vociferously
unresponded	56:21	116:24	64:9,11
49:19	valid 202:10	117:12,23	voicemail
unresponsive	vecuronium	240:17,25	211:2
90:3	77:11	vet 212:20	volunteering
unwilling	135:4	veterinarian	10:16
114:3	136:3	212:6,10	<hr/>
195:4	137:17	viable 163:7	w
up-to-date	148:20	200:16	<hr/>
229:4	149:11	victim's	wait 43:14
upcoming	172:15	270:4	247:4
	236:8		273:5

ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.

Tony Parker on 06/05/2018

Index: waiting..wondering

waiting	22,23	Warden's	whispering
87:14	90:13 91:5	39:5,15	148:23
263:21	93:6,8,16,	89:17	Whiteville
waits 257:7	17 98:11	93:25	23:2
waive 279:2	100:17	109:1	wholesalers
wake 260:25	105:3,7,	114:19	74:25
wanted 17:8	10,12,15	118:12	224:22
56:2	106:1	121:15	wife 78:1
152:16	109:12,17,	272:11	willfully
155:13,14	24 110:6	wardens 21:2	244:23
158:11	112:19,23	wash 239:16	window
160:19	113:3,10,	watch 27:1	270:5,16
161:5	13,14,17,	80:7,16	windows
167:25	20,22	94:9	269:20
211:5	114:2,3,4,	269:15	wiring
Warden 21:5,	16 115:8	watching	277:13
7,14	118:8,13	275:22	wisdom 69:8
23:10,21,	119:4	water 17:13	withhold
23,25	120:2,11,	ways 70:11	49:21
26:20,23	18,20	164:10	witnessed
30:3 36:5	121:1,4,8,	200:5	161:7,11,
37:19	13,14,23	Wednesday	14,19
38:12,16,	122:5,13,	210:6	163:2
24 39:24	22,23,24	week 111:17	247:17
67:5,13,18	123:4,11,	170:3	witnesses
68:5,13,15	14,20	weeks 12:16	153:2
69:9 81:8,	126:7	20:1 53:1	268:9
9,13,24	237:10	224:18	275:13
82:4,9,11,	247:15	236:20	witnessing
18,21,22	258:13,16	West 22:20,	250:10
83:2,18	259:11,16,	22,24	wondering
84:14,22	25 260:3,	23:1,11,12	100:6
86:15	13 261:1,	131:1	177:17
87:20,21	17,25	233:20	
88:10	262:8		
89:1,9,13,	263:13		
	265:23		
	272:6		

word 63:21	worked 42:20	wrong 74:16	
66:15,16,	122:3	160:10	Z
25 67:11	163:7,9	259:13	
81:6 88:9	195:19	275:15	Zagorski
112:7	218:22	279:13	117:12,17
148:21	working	wrote 149:2	zoom 246:19
174:21	111:9	180:11	275:23
182:5	122:8	210:18	
213:24	166:6	212:23	
223:9,11,	273:24	227:22	
14 225:12,	worries	248:18	
13,23	270:25		
263:1		Y	
worded 14:24	worse 176:1		
15:1 234:9	wrap 275:2	y'all 211:3	
wording	write 25:7	year 21:23	
71:22	66:1 177:3	111:17	
words 157:2	232:10,13,	126:13,15,	
160:19	18	20 146:14,	
175:9	writer	18 235:9,	
222:4,9	149:20	17 237:2	
223:6	227:24	years 20:12	
226:15	writing	21:20	
227:12	121:21	23:4,16	
228:20	written	24:22	
229:23	37:22 66:6	42:20	
239:3	88:25 91:9	126:14	
work 82:23	119:25	131:15	
121:2	120:22	yesterday	
138:4	184:5	200:23	
167:17,20	221:24	247:22	
184:9	231:20	250:24	
197:10	237:9,16	272:7	
211:16	245:18	279:1	
229:7,15	247:6	you-all 32:8	
264:1	248:25		
271:25			